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

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

Accordingly, the Risk Manager has calculated the consumer price index (CPI) for calendar years 2013 and 2015 using the standards provided in Sections 1(f)(4) and 1 (f)(5) of the Internal Revenue Code. Section 1(f)(4) has defined the CPI for any calendar year to mean the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year. Section 1(f)(5) has defined "consumer price index" to mean the index used for all-urban consumers published by the Department of Labor. By applying these standards, the consumer price index for the calendar year 2013 is calculated to be 232.02 and the index for 2015 is 236.75. The percentage difference between the 2013 index and the 2015 index was then computed to be 2.0%.

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

As a result of the above required calculations, the new limitation of judgment amounts currently required by UCA 63G-7-604(1) has been increased as follows, and is effective July 1, 2016 for claims occurring on or after that date:

1) The limit for damages for personal injury against a governmental entity, or an employee who a governmental entity has a duty to indemnify, is $717,100 for one person in any one occurrence, and $2,455,900 aggregate amount of individual awards that be may awarded in relation to a single occurrence; and

2) The limit for property damages (excluding damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation) against a governmental entity, or an employee whom a governmental entity has a duty to indemnify is $286,900 in any one occurrence.

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

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

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

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

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

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

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

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

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

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

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

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

11) Incident(s) occurring on or after July 1, 2016 - $717,100 for one person in an occurrence, $2,455,900 aggregate for two or more persons in an occurrence, and $286,900 for property damage for any one occurrence as explained in R37-4-2(2).

KEY: limitation on judgments, risk management, Governmental Immunity Act caps
June 1, 2016 63G-7-604(4)
Notice of Continuation May 30, 2012

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

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

R81-1-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R81-1-3. General Policies.

(1) Labeling.

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

(2) Manner of Paying Fees.

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

(3) Copy of Commission Rules.

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

(4) Interest Assessment on Delinquent Accounts.

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

(5) Returned Checks.

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

(i) insufficient funds;

(ii) refer to maker; or

(iii) account closed.

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

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

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

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

(ii) the number of returned checks;

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

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

(v) any other circumstances.

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

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

(6) Disposition of unsaleable merchandise.

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

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

(7) Administrative Handling Fees.

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

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

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

(8) Case Handling Markup

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

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

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

(9) Listing and Delisting Product: Pursuant to 32B-2-202(1) (b) and (k), this rule authorizes the director to make internal department policies in accordance with 32B-2-206(1) (2) and (5) for department duties as defined by 32B- 2-204(1) for listing and de-listing products to include a program to place orders for products not kept for sale by the department.

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

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

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

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

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

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

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

R81-1-6. Violation Schedule.

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

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

(3) Application of Rule.

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

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

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive

months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a $500 to $3000 fine for the licensee or permittee and up to a $300 fine

for the officer, employee or agent.

(ii) Second occurrence of the same type of serious violation: a ten to 90 day suspension of the license or permit and a ten to 90 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $9000 fine for the licensee or permittee and up to a $350 fine for the officer, employee or agent.

(iii) More than two occurrences of the same type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a $9000 to $25,000 fine for the licensee or permittee and up to a $700 fine for the officer, employee or agent.

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

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

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

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

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

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

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

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

TABLE

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

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

TABLE

Violation Degree and Frequency	Warning Verbal	Warning Written	Fine $ Amount	Suspension No. of Days
Minor				
1st	X	X		
2nd		X	to 25	
3rd			to 50	1 to 5
Over 3			to 75	6 to 10
Moderate				
1st		X	to 50	
2nd			to 75	3 to 10
3rd			to 100	10 to 20
Over 3			to 150	15 to 30
Serious				
1st			to 300	5 to 30
2nd			to 350	10 to 90
Over 2			to 700	15 to 120
Grave				
1st			to 300	10 to 120
Over 1			to 500	15 to 180

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

(a) Examples of mitigating circumstances are:

(i) no prior violation history;

(ii) good faith effort to prevent a violation;

(iii) existence of written policies governing employee conduct;

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

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

(b) Examples of aggravating circumstances are:

(i) prior warnings about compliance problems;

(ii) prior violation history;

(iii) lack of written policies governing employee conduct;

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

(v) efforts to conceal a violation;

(vi) intentional nature of the violation;

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

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

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

(6) Violation Grid. Any proposed substantive change to the violation grid that would establish or adjust the degree of seriousness of a violation shall require rulemaking in compliance with title 63G-3, the Utah Administrative

Rulemaking Act. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" (January 2012 edition) and is incorporated by reference as part of this rule.

R81-1-7. Disciplinary Hearings.

(1) General Provisions.

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

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

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

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

(e) Penalties.

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

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

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

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

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

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

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

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

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

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

(j) Presiding Officers.

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

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

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

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

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

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

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

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

(m) Default.

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

(ii) The order shall include a statement of the grounds for

default, and shall be mailed to the respondent and the department.

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

(iv) After issuing the order of default, the commission or presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

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

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

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

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

(A) The case number assigned to the action;

(B) The name of the respondent;

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

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

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

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

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

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

(A) The case number assigned to the action;

(B) The name of the respondent;

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

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

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

(c) Commencement of Adjudicative Proceedings.

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

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

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

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

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

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

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

(3) The Informal Process.

(a) Notice of agency action.

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

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

(B) The department's case number;

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

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

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

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

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

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

(I) A statement of the legal authority and jurisdiction

under which the adjudicative proceeding is to be maintained;

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

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

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

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

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

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

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

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

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

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

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

(b) The Prehearing Conference.

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

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

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

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

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

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

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

(c) The Informal Hearing.

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

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

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

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

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

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

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

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

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

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

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

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

(vii) A respondent shall have access to information

contained in the department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

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

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

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

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

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

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

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

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

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

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

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

(d) Disposition.

(i) Presiding Officer's Order; Objections.

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

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

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

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

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

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

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

(ii) Commission Action.

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

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

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

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

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

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

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

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

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

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

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

(I) A copy of the commission's order shall be promptly

mailed to the parties.

(e) Judicial Review.

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

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63G-4-402, -404, and -405, and 32B-3-207.

(4) The Formal Process.

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

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

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

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

(A) the case number assigned to the action;

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

(C) the name of the respondent;

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

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

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

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

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

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

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

(vi) Pleadings shall be signed by the party or the party's attorney and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth;

(b) Intervention.

(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the presiding officer. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(A) the agency's case number;

(B) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings or that the petitioner qualifies as an intervenor under any provision of law; and

(C) a statement of the relief that the petitioner seeks from the agency;

(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention. The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(iii) Granting of Petition. The presiding officer shall grant a petition for intervention if the presiding officer determines that:

(A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(iv) Order Requirements.

(A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(B) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(C) The presiding officer may impose conditions at any time after the intervention.

(D) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation, the presiding officer may dismiss the intervenor from the proceeding.

(E) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

(c) Discovery and Subpoenas.

(i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the presiding officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

(ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

(d) The Formal Hearing.

(i) Notice. The presiding officer shall notify the parties in writing of the date, time, and place of the hearing at least ten days in advance of the hearing. The presiding officer's name, title, mailing address, and telephone number shall be provided to the parties. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and the respondent's right to the hearing. The presiding officer shall proceed to prepare and serve on respondent his order pursuant to R81-1-7(4)(e).

(ii) Public Hearing. The hearing shall be open to all parties. It shall also be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open hearing is clearly

outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(iii) Rights of Parties. The presiding officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.

(iv) Public Participation. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The presiding officer:

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

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

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

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

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

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

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

(vi) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(vii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

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

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

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

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

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

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

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

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

(xii) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to Section 32B-3-203(3)(b) and (c).

(e) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time of the close of the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a written order that includes the following:

(I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) recommendations for final commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action;

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

(B) A copy of the presiding officer's order shall be promptly mailed to the parties.

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

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

(ii) Commission Action.

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

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

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

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant

to Section 32B-3-204(4) and 63G-4-208(1) that includes:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) action ordered by the commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

(VI) notice of the right to file a written request for reconsideration within ten days of the service of the order;

(VII) notice of the right to seek judicial review of the order within thirty days of the date of its issuance in the court of appeals in accordance with Sections 32B-3-207 and 63G-4-403, -404, -405.

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

(F) The commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.

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

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

(I) A respondent having objections to the order of the commission may file, within ten days of service of the order, a request for reconsideration with the commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence prior to the formal hearing, and why the evidence would affect the commission's order.

(J) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the commission's order.

(K) Within twenty days of the filing of a request for reconsideration, the commission may issue or cause to be issued a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the commission may confirm its former order or vacate, change or modify the same in any particular, or may remand for further action. The final order shall have the same force and effect as the original order.

(L) If the commission does not issue an order within twenty days after the filing of the request, the request for reconsideration shall be considered denied.

(f) Judicial Review.

(i) Respondent may file a petition for judicial review of the commission's final order within 30 days from the date the order is issued.

(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with Sections 63G-4-403, -404, and 405, and Section 32B-3-207.

R81-1-8. Consent Calendar Procedures.

(1) Authority. This rule is pursuant to the commission's authority to establish procedures for suspending or revoking permits, licenses, and package agencies under 32B-2-202(1)(c) and (e), and the commission's authority to adjudicate violations of Title 32B.

(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R81-1-7 that meet the following criteria:

(a) Uncontested letters of admonishment where no written objections have been received from the respondent; and

(b) Settlement agreements except those where the respondent is allowed to present further argument to the commission under the terms of the settlement agreement.

(3) Application of the Rule.

(a) A consent calendar may be utilized by the commission at their meetings to expedite the handling of letters of admonishment and settlement agreements that meet the criteria of Section (2).

(b) Consent calendar items shall be briefly summarized by department staff or the assistant attorney general assigned to the department. The summary shall describe the nature of the violations and the penalties sought.

(c)(i) The commission shall be furnished in advance of the meeting a copy of each letter of admonishment and settlement agreement on the consent calendar and any documents essential for the commission to make an informed decision on the matter.

(ii) If the case involves anything unusual or out of the ordinary, it shall be highlighted on the letter of admonishment or settlement agreement and shall be noted by the department staff person or assistant attorney general during the summary of the case.

(iii) Settlement agreements on the consent calendar shall include specific proposed dates for the suspension of any license or permit, and for payment of any fines or administrative costs.

(d) If the case involves a serious or grave violation as defined in R81-1-6, the licensee or permittee, absent good cause, shall be in attendance at the commission meeting. The licensee or permittee shall be present not to make a presentation, but to respond to any questions from the commission. Individual employees of a licensee or permittee are not required to be in attendance at the commission meeting.

(e) Any commissioner may have an item removed from the consent calendar if the commissioner feels that further inquiry is necessary before reaching a final decision. In the event a commissioner elects to remove an item from the consent calendar, and the licensee or permittee is not in attendance, the matter may be rescheduled for the next regular commission meeting. Otherwise, the action recommended by department staff or the assistant attorney general presenting the matter shall be approved by unanimous consent of the commission.

(f) All consent calendar items shall be approved in a single motion at the conclusion of the presentation of the summary.

(g) All fines and administrative costs shall be paid on or before the day of the commission meeting unless otherwise provided by order of the commission.

R81-1-9. Liquor Dispensing Systems.

A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the department.

(1) A dispensing system is approved by the department if it meets the following minimum requirements:

(a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces;

(b) has a meter which counts the number of pours dispensed; and

(c) The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Licensee Responsibility.

(a) The licensee is responsible for verifying that the system, when initially installed, meets the specifications which listed in subsection (1). Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the approved specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.

(b) Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 31.261-31.262 and 26 USC Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) a list of brands of liquor dispensed through the dispensing system;

(ii) the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;

(iii) number of portions of liquor sold; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

(v) These records must be made available for inspection and audit by the department or law enforcement.

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than 1.5 ounces of primary spirituous liquor and no more than a total of 2.5 ounces of spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(j) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32B-1-102(75) shall include the location of any licensed restaurant, limited restaurant, beer-only restaurant, club, or recreational amenity on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex, and any similar sublicense located within the same building of a resort license under 32B-8. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32B-1-102(92) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;

(b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis pursuant to the record keeping requirements of Section 32B-5-302;

(c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash

vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R81-1-12. Alcohol Training and Education Seminar.

(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every individual of every new and renewing licensee under title 32B who:

(a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;

(b) is employed to manage or supervise the service of alcoholic beverages; or

(c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

(a) date of hire, and

(b) date of completion of training.

(4) The seminar shall include the following subjects in the curriculum and training:

(a) alcohol as a drug and its effect on the body and behavior;

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

(e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

(a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(b) engage in any activity that would constitute managing operations at the premises of a licensee.

R81-1-13. Utah Government Records Access and Management Act.

(1) Purpose. To provide procedures for access to government records of the commission and the department.

(2) Authority. The authority for this rule is Sections 63G-2-204 and 63A-12-104 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the commission or the department should be written and made to the executive secretary of the commission or the records officer of the department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 South 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the commission and the department by contacting the appropriate official specified in paragraph (3) above. The department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63G-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by Section 63G-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the commission or department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of Section 63G-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in paragraph (3) above. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63G-2-603. The request should be made to the appropriate official specified in paragraph (3) above.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R81-1-14. Americans With Disabilities Act Grievance Procedures.

(1) Authority and Purpose.

(a) This rule is made under authority of Section 32B-2-202 and 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Alcoholic Beverage Control, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(b) The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the department because of a disability.

(2) Definitions.

(a) "ADA Coordinator" means the employee assigned by the executive director to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may be a representative of the Department of Human Resource Management assigned to the Department.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Designee" means an individual appointed by the executive director or a director to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(d) "Director" means the head of the division of the Department affected by a complaint filed under this rule.

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

(f) "Executive Director" means the executive director of the department.

(g) "Major life activities" include caring for oneself,

performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(h) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department. A "qualified individual" is also an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

(3) Filing of Complaints.

(a) Any qualified individual may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(b) Qualified individuals shall file their complaints with the Department's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Department's designee.

(c) Qualified individuals shall file their complaints within 90 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Executive Director has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged noncompliance.

(d) Each complaint shall:

(i) include the complainant's name and address;

(ii) include the nature and extent of the individual's disability;

(iii) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desired; and

(v) be signed by the complainant or by his legal representative.

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

(f) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(g) By the filing of a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code, Subsection 63G-2-302(1)(b) and Section 63G-2-304,consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. Section 12112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

(4) Investigation of Complaints.

(a) The ADA coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R81-1-14(3)(d) and (g) of this rule if it is not made available by the complainant.

(b) The ADA coordinator or designee may seek assistance from the Attorney General's staff, and the department's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.

(c) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(i) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(ii) require facility modifications; or

(iii) require reassignment to a different position.

(5) Recommendation and Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator or designee shall recommend to the director what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(b) If the ADA coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or in another accessible format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

(c) The director may confer with the ADA coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The director shall render a decision within 15 working days after the director's receipt of the recommendation from the ADA coordinator or designee. The director shall take all reasonable steps to implement the decision. The director's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(6) Appeals.

(a) The complainant may appeal the director's decision to the executive director within ten working days after the complainant's receipt of the director's decision.

(b) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(c) The executive director may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the executive director's designee for the appeal.

(d) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(e) The executive director or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal prior to reaching a decision. The executive director may direct additional investigation as necessary. The executive director shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(i) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(ii) require facility modifications; or

(iii) require reassignment to a different position.

(f) The executive director shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(g) If the executive director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing, or by another accessible format suitable to the complainant, why the final

decision is being delayed and the additional time needed to reach a final decision.

(7) Record Classification.

(a) Records created in administering this rule are classified as "protected" under Subsections 63G-2-305(9), (22), (24), and (25).

(b) After issuing a decision under Section R81-1-14(5)or a final decision upon appeal under Section R81-1-14(6), portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Subsection 63G-2-302(1)(b) or "controlled" under Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(a) The written decision of the division director or executive director shall be classified as "public," and all other records, except controlled records under Subsection R81-1-14(7)(b), classified as "private."

(8) Relationship to Other Laws. This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 34A-5-107, and Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

R81-1-15. Commission Declaratory Orders.

(1) Authority. As required by Section 63G-4-503, and as authorized by Section 32B-2-202, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the commission, a rule promulgated by the commission, or an order issued by the commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

R81-1-16. Disqualification Based Upon Conviction of Crime.

(1) The Alcoholic Beverage Control Act disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a package agency, licensee or permittee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

(c) any crime involving moral turpitude; or

(d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.

(2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):

(a) a partner;

(b) a managing agent;

(c) a manager;

(d) an officer;

(e) a director;

(f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(g) a member who owns at least 20% of the limited liability company.

(3) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

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

R81-1-17. Advertising.

(1) Authority and General Purpose. This rule is pursuant to Section 32B-4-510(4) which authorizes the commission to establish guidelines for the advertising of alcoholic beverages in this state except to the extent prohibited by Title 32B.

(2) Definitions.

(a) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic

beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(i) labels on products; or

(ii) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32B-1-102(55), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1 shall comply with the advertising requirements listed in Section (6) of this rule.

(6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (3);

(b) May not contain any statement, design, device, or representation that is false or misleading;

(c) May not contain any statement, design, device, or representation that is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free alcohol", or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by minors;

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) May not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) May not offer alcoholic beverages without charge;

(n) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(7) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32B-3-205, and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to 32B-4-304 and -510.

R81-1-19. Emergency Meetings.

(1) Purpose. The commission recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Utah Code Sections 52-4-6(1), (2) and (3) cannot be met. Pursuant to Utah Code Section 52-4-6(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

(2) Authority. This rule is enacted under the authority of Sections 63G-3-201 and 32B-2-202.

(3) Procedure. The following procedure shall govern any emergency meeting:

(a) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the commission of the proposed meeting and a majority of the convened commission votes in the affirmative to hold such an emergency meeting.

(b) Public notice of the emergency meeting shall be

provided as soon as practicable and shall include at a minimum the following:

(i) Written posting of the agenda and notice at the offices of the department;

(ii) If members of the commission may appear electronically or telephonically, all such notices shall specify the anchor location for the meeting at which interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;

(iii) Notice to the commissioners shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum.

(iv) Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.

(c) If one or more members of the commission appear electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.

(d) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the commission shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the commission to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-6 could not be followed.

R81-1-20. Electronic Meetings.

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

(2) Authority. This rule is enacted under the authority of Sections 52-4-207, 63G-3-201 and 32B-2-202.

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

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

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

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

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

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Alcoholic Beverage Control, 1625 South 900 West, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R81-1-21. Beer Advertising in Event Venues.

(1) Authority. This rule is pursuant to the commission's powers and duties as the plenary policymaking body on the subject of alcoholic beverage control under 32B-2-202, and its authority to establish guidelines for the advertising of alcoholic beverages under 32B-4-510.

(2) Purpose.

(a) This rule establishes a "safe harbor" from administrative action being taken against beer manufacturers and retailers under the circumstances and conditions below. This rule is necessary to allow certain advertising relations to occur even though they have the appearance of violating the "tied-house" provisions of 32B-4-703 to -705, but where the reasons and purposes for the "tied-house" provisions do not apply.

(b) "Tied-house" provisions have been enacted at both the federal and state level in response to historical forces and concerns. The thrust of the laws is to prevent two particular dangers: the ability and potential ability of large firms to dominate local markets through vertical and horizontal integration, and excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The principle method used to avoid these developments was the establishment of a triple-tiered distribution system and licensing scheme where separate and distinct business enterprises engaged in the production, handling, and final sale of alcoholic beverages. The laws also prohibited certain economic arrangements and agreements between each of the three tiers of the distribution system.

(c) Utah's "tied-house" and trade practice laws prohibit a beer industry member, directly or indirectly or through an affiliate, from inducing any beer retailer to purchase alcoholic beverages from the industry member to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing the retailer signs, money or other things of value except to the extent allowed under 32B-4-703 to -705. The laws prohibit a beer industry member, directly or indirectly or through an affiliate, from paying or crediting a beer retailer for any advertising, display, or distribution service. 32B-4-704(4). This includes the purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire. See 27 C.F.R. Sec. 6.53 as referenced in 32B-4-704(4)(a). The laws also prohibit an industry member from making payments for advertising to a retailer association or a display company where the resulting benefits flow to the individual retailers. 32B-4-704(3)(b)(i)(B).

(d) Throughout the state, there are a number of large facilities which put on or allow events to occur on their premises. This includes sports arenas, ballparks, raceways, fairgrounds, equestrian facilities and the like. These facilities have a recognized area of advertising for sale in connection with the events and which is standard for their events, e.g., fence signage at ballparks. Many of these facilities are or have associated with their on-premise beer retailer, either on an annual basis, or as a temporary event permit holder. The issue is thus raised as to the legality of the advertising of beer products as part of the general advertising where other items are advertised and the facility is or has within it an on-premise beer retailer.

(3) Application of the Rule. If the conditions listed below

are met, the reasons and purposes behind the "tied-house" provisions restricting relations between manufacturers and retailers do not apply or are not significantly impacted. In addition, an event facility may be unduly restricted in its ability to sell advertising and be competitive. This is based upon the facility's primary purpose being other than the sale of food and beverages, that advertising is a normal and accepted part of the business of the facility and the events that occur at the facility, that beer advertisers would be on equal footing with other advertisers, and that there is little, if any, likelihood of the purchasing of advertising space or time either having an impact on the beer retailing decisions of the retailer or of allowing the manufacturer to obtain or assert control over the retailer. Therefore, if the following conditions are met, the sale of advertising space or time to a beer manufacturer for display at the facility does not constitute the payment to a retailer for advertising, display or distribution service, and does not otherwise constitute the furnishing of any signs, money, or other things of value to a retailer in violation of the "tied-house" provisions of 32B-4-704:

(a) The primary purpose of the facility is the hosting or putting on events, and not the sale or service of food and beverages, including alcoholic beverages;

(b) The retail licensee operates with a fixed seating capacity of more than 2,000 persons;

(c) The advertising space or time is purchased only in connection with events to be held on the premises, and not as point-of-sale advertising. The advertising space or time is not located near the beer concession area and does not reference the on-premise retailer or the availability of beer;

(d) Sales of event advertising space or time and retail beer sales are handled by different entities or divisions, that are separate and do not influence each other, and no preference in terms of beer sales or facilities are extended to a beer advertiser;

(e) The retail licensee serves other brands of malt beverages or beer than the brand manufactured or sold by the manufacturer purchasing advertising space or time. Unless demonstrated for sound business reasons unrelated to "tied-house" laws, the percentage of taps in a facility may not exceed by 10% the actual percentage of sales, by brand, in that facility or the community in the previous year;

(f) The advertising space or time is available to all types of advertisers, is not limited to any type of product, such as beer, is pursuant to an established rate card that sets forth the advertising rates equally available to any other industry member or (and at rates substantially similar for any) non-industry advertiser, and the advertising agreement does not provide for an exclusive right to an advertiser or a right to exclude other advertisers;

(g) The industry member may not share in the costs or contribute to the costs of the advertising or promotion of the beer retailer or the facility, or obtain or have any interest in the retailer or the facility; and

(h) The purchase of advertising space or time is by written agreement, a copy of which shall be provided to the department as a confidential business document, non-public, and only to be used for enforcement purposes, and the term of the agreement may not be for a period in excess of three years, including any right of renewal.

(4) This "safe harbor" is limited to its express terms, does not undermine or infringe upon general "tied-house" prohibitions, and shall be strictly construed against its applicability. This "safe harbor" also does not limit or abrogate any exception to "tied-house" prohibitions.

R81-1-22. Diplomatic Embassy Shipments and Purchases.

(1) Purpose. The Vienna Conventions on Diplomatic and Consular Relations grant foreign diplomatic missions certain exemptions from federal, state and local taxes. The United States, by treaty, is a party to the Vienna Conventions, and is obligated under international law to grant these exemptions under these agreements to accredited diplomatic missions of those countries that grant the United States reciprocal privileges. These privileges include the purchase of alcoholic beverages duty and tax free subject to certain exceptions such as indirect taxes normally incorporated in the price of goods or services, and charges levied for specific services rendered to benefit the mission.

This rule establishes department guidelines for shipments and purchases of alcohol by a foreign diplomatic mission with an accredited embassy having full diplomatic privileges under the Vienna Conventions that establishes an embassy presence in the state of Utah (hereafter "accredited foreign diplomatic mission").

(2) Application of Rule.

(a) Shipments. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may have or possess, for official diplomatic use, and not for sale or resale, alcoholic beverages that have not been purchased in the state of Utah. Such products may be shipped or transported into the state of Utah under the following conditions:

(i) The embassy must first obtain the approval of this department prior to shipping or transporting its alcoholic beverages into the state.

(ii) Alcoholic beverages shipped or transported into the state must clear U.S. Customs duty free.

(iv) The embassy shall pay the department an administrative handling fee of $1.00 per smallest unit (bottle, can, or keg). Payment of handling fees shall be made by the embassy using an official embassy check or embassy credit card.

(v) The alcoholic beverages may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(b) Purchases.

(i) Special Orders. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may special order from the department alcoholic beverage products not presently sold in the state of Utah under the following procedures:

(A) The company or importer supplying the product must submit a price quotation to the department indicating the case price (in US dollars) for which it will sell the product to the state.

(B) The quoted case price must be reasonable (a minimum of $10.00 per case).

(C) The product will be marked up using the department's standard pricing formula (less the state sales tax).

(D) Special orders must be placed by the embassy at least two months in advance to allow the department sufficient time to purchase and receive the product for the embassy.

(E) The product must be paid for by the embassy using an official embassy check or embassy credit card.

(F) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(ii) Presently Available Merchandise. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may purchase alcoholic beverages that are presently sold in the state of Utah under the following procedures:

(A) Alcoholic beverage product purchases, other than large quantity purchases, may be made by the embassy at any state store. The store shall deduct state sales tax from the purchase price.

(B) Large quantity purchase orders must be placed by the embassy at the department's licensee warehouse. The warehouse shall deduct state sales tax from the purchase price.

(C) The products must be paid for by the embassy using an official embassy check or embassy credit card.

(D) The product may be used by the embassy only for

official diplomatic functions, and may not be sold or resold.

R81-1-23. Sales Restrictions on Products of Limited Availability.

(1) Purpose. Some alcoholic beverage products, especially wines, are of very limited availability from their manufacturers and suppliers to retailers including the department. When the department perceives that customer demand for these limited products may exceed the department's current and future stock levels, the department, as a public agency, may place restrictions on their sales to ensure their fair distribution to all consumers. This also encourages manufacturers and suppliers to continue to provide their products to the department. This rule establishes the procedure for allocating products of limited availability.

(2) Application of Rule.

(a) The purchasing and wine divisions of the department shall identify those products that are of limited availability and designate them as "Limited /Allocated Status" ("L Status") items. The products shall be given a special "L Status" product code designation.

(b) "L Status" products on the department's price list, in stock, or on order, do not have to be sold on demand. Their sales to the general public and to licensees and permittees may be restricted. The purchasing and wine divisions of the department may issue system-wide restrictions directing the allocation of such products which may include placing limits on the number of bottles sold per customer.

(c) Signs noting this rule shall be posted in state stores and package agencies that carry "L Status" products.

R81-1-24. Responsible Alcohol Service Plan.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control; set policy by written rules that establish criteria and procedures for suspending or revoking licenses; and prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule allows the commission to require a business licensed by the commission to sell, serve or store alcoholic beverages for consumption on the licensed premises that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, to have a written Responsible Alcohol Service Plan.

(3) Definitions.

(a) "Commission" means the Alcoholic Beverage Control Commission.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Intoxication" and "intoxicated" are as defined in 32B-1-102(48).

(d) "Licensed Business" is a person or business entity licensed by the commission to sell, serve, and store alcoholic beverages for consumption on the premises of the business.

(e) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at a licensed business. A manager may also be a supervisor.

(f) "Responsible Alcohol Service Plan" or "Plan" means a written set of policies and procedures of a licensed business that outline measures that will be taken by the business to prevent employees of the licensed business from:

(i) over-serving alcoholic beverages to customers;

(ii) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and

(iii) serving alcoholic beverages to persons under the age of 21.

(h) "Server" means an employee who actually makes available, serves to, or provides an alcoholic beverage to a customer for consumption on the business premises.

(i) "Supervisor" means an employee who, under the direction of a manager or owner, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the business.

(4) Application of Rule.

(a)(i) The commission may direct that a licensed business that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, submit to the department a Responsible Alcohol Service Plan.

(ii) The licensee thereafter shall maintain a Plan as a condition of continued licensing and relicensing by the commission.

(b) Any Plan at a minimum shall:

(i) outline the policies and procedures of the licensed business to:

(A) prevent over-service of alcohol;

(B) prevent service of alcohol to persons who are intoxicated;

(C) prevent service of alcohol to persons under the age of 21;

(D) provide alternate transportation options for problem customers; and

(E) deal with hostile customers;

(ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of alcohol, agree to follow the policies and procedures of the Plan;

(iii) require adherence to the Plan as a condition of employment;

(iv) require a commitment by management to monitor employee compliance with the Plan;

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar required by 62A-15-401, such as:

(A) identifying legal forms of ID, checking ID, and recognizing fake ID;

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

(E) discussing techniques for monitoring and controlling consumption such as:

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

(F) discussing third party or "dram shop" liability for the unlawful service of alcohol to intoxicated persons and persons under the age of 21 as outlined in 32B-15; and

(G) discussing the potential criminal, civil and administrative penalties for over-serving alcohol, selling, serving, or otherwise furnishing alcohol to persons who are intoxicated, or to persons who are under the age of 21.

(c) The licensed business may choose to include in the Plan incentives for those employees who deserve special recognition for their responsible service of alcohol.

(d) The Plan shall be available on the premises of the licensed business so as to be accessible to all employees of the licensed business who are involved in the sale, service or furnishing of alcohol.

(e) The Plan shall be available on the premises of the licensed business for inspection by representatives of the commission, department and by law enforcement officers.

(f) Any licensed business that fails to submit to the

department a Plan as directed by the commission pursuant to Subsection (4)(a), or to have a Plan available for inspection as required by Subsection (4)(e), shall be subject to the immediate suspension or revocation of its current license, and shall not be granted a renewal of its license by the commission.

(g) The department, at the request of a licensed business, may provide assistance in the preparation of a Plan.

R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to:

(a) the police powers of the state under 32B-1-104 to regulate the sale, service and consumption of alcoholic beverages in a manner that protects the public health, peace, safety, welfare, and morals;

(b) the commission's powers and duties under 32B-2-202 to prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored; and

(c) 32B-1-501 to -506 that prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the commission and require them to appear or perform only in a tavern or social club and only upon a stage or in a designated area approved by the commission in accordance with commission rule.

(2) Purpose. This rule establishes guidelines used by the commission to approve stages and designated performance areas in a tavern or social club where sexually-oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity"means a state of dress as defined in 32B-1-102(102).

(b) "Sexually-oriented entertainer" means a person defined in 32B-1-102(93).

(4) Application of Rule.

(a) A sexually-oriented entertainer may appear or perform seminude only on the premises of a tavern or social club.

(b) A tavern or social club licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually-oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of 32B-1-502 to -506;

(ii) a patron to be on the stage or in the performance area while a sexually-oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for commission approval a floor-plan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or social club license from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or social club licensee of the commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or social club licensee of the commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the commission.

(ii) The commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of Sections (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

R81-1-26. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

(a) the commission's powers and duties under 32B-2-202 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies;

(b) 32B-1-301 to -307 that prohibit certain persons who have been convicted of certain criminal offenses from being employed by the department or from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency; and

(c) 32B-1-301 to -307 that allow for the department to require criminal history background check reports on certain individuals.

(2) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must submit to a background check to show the person meets the qualifications of those statutory sections as a condition of employment with the department, or as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background checks.

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(ii),(iii), and (iv), a person identified in Subparagraph (1)(b) shall consent to a criminal background check by Utah Bureau of Criminal Identification, Department of Public Safety (hereafter "B.C.I.") and the Federal Bureau of Investigation (hereinafter "F.B.I").

(ii) A person identified in Subparagraph (1)(b) who submitted a criminal background check on or after July 1, 2015 shall not be required to submit to a background check if the department can confirm that the individual has maintained a regulatory or employment relationship as outlined in the department's privacy risk mitigation strategy required by 32B-1-307(4)(iv)(b).

(iii) An applicant for an event permit under 32B-9 shall not be required to submit to a background check if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(iv) An applicant for employment with benefits with the

department shall be required to submit to a background check if the department has made the decision to offer the applicant employment with the department.

(b) An application that requires background checks(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the required criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant has submitted to a background check in a form acceptable to the department; and

(iv) the applicant stipulates in writing that if a criminal history background report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the B.C.I. and F.B.I. is processing the criminal history report(s).

(d) Upon the department's receipt of the criminal history background report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.

(e) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of criminal history background report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (e).

(f) An applicant for employment with benefits with the department that requires a background check may be conditionally hired by the department prior to receipt of the report if:

(i) the applicant attests in writing that he or she is not aware of any criminal conviction that would disqualify the applicant from employment with the department;

(ii) the applicant has submitted to a background check in a form acceptable to the department;

(iii) the applicant stipulates in writing that if a criminal history background report shows a criminal conviction that would disqualify the applicant from employment with the department, the applicant shall terminate his or her employment with the department.

R81-1-27. Label Approvals.

(1) Authority. This rule is pursuant to 32B-1-606(2)(c) and (d) and 32B-1-607 which give the commission the authority to adopt rules necessary to fully implement certain aspects of the Malted Beverages Act, 32A-1-801 to -809.

(2) Purpose.

(a) Pursuant to 32B-1-604, a manufacturer may not distribute or sell in this state any malted beverage including beer, heavy beer, and flavored malt beverage unless the label and packaging of the beverage has been first approved by the department.

(b) The requirements and procedures for applying for label and packaging approval are set forth in 32B-1-604 to -606.

(c) This rule:

(i) establishes administrative fees that may be assessed by the department to process applications for the approval of malt beverage labels and packaging;

(ii) provides supplemental procedures for applying for and processing label and package approvals;

(iii) defines the meaning of certain terms in the Malted Beverages Act; and

(iv) establishes the format of certain words and phrases required on the containers and packaging of certain flavored malt beverages.

(3) Application of Rule.

(a) The department shall assess a fee of $30.00 made payable to the "Department of Alcoholic Beverage Control" for each application submitted for label and packaging approval.

(b) A complete set of original labels for each size of container must accompany each application for label and packaging approval.

(i) This includes all band, strip, front and back labels appearing on any individual container.

(ii) Original containers will not be accepted.

(iii) If original labels cannot be obtained, the following will be accepted:

(A) color reproductions that are exact size; or

(B) a copy of the federal certificate of label approval (COLA) from the Department of Treasury, Tax and Trade Bureau (Form TTB F5100.31) with the exact size label if printed in color.

(c) Because a heavy beer and flavored malt beverage product may be sold only by the department to consumers and on-premise retailers in this state, label approval for a heavy beer or flavored malt beverage need not be applied for until the department has decided to list the product for sale in this state. Any listing will be contingent on label and packaging approval.

(d) An application for approval is required for any revision of a previously approved label.

(e) An application for approval is required for any revision to packaging that significantly modifies the notice that the product is an alcoholic beverage.

(f) An application for approval is not required for any revision to packaging that relates to subject matter other than the required notice that the product is an alcoholic beverage such as temporary seasonal or promotional themes.

(g) Pursuant to 32B-1-605(6):

(i) the department may revoke any label and packaging that does not comply with the label and packaging requirements of the Malted Beverage Act;

(ii) the department may delist any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that does not meet the label and packaging requirements of the Malted Beverage Act;

(iii) any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that did not receive prior label and packaging approval need not submit an application for label and packaging approval if the label and packaging meet the requirements of the Malted Beverage Act.

(h) Pursuant to 32B-1-606, a flavored malt beverage that is packaged in a manner that is similar to a label or package used for a nonalcoholic beverage must bear a prominently displayed label or a firmly affixed sticker on the container that includes the statement "alcoholic beverage" or "contains alcohol". Any packaging of a flavored malt beverage must also prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging the statement "alcoholic beverage" or "contains alcohol". The words in the statement must appear:

(i) in capital letters and bold type;
(ii) in a solid contrasting background;
(iii) on the front of the container and packaging;
(iv) in a format that is readily legible;
(v) separate and apart from any descriptive or explanatory information; and
(vi) in a type size no smaller than 3 millimeters wide and 3 millimeters high.
(i) Pursuant to 32B-1-606, the label on a flavored malt beverage container shall state the alcohol content as a percentage of alcohol by volume or by weight. The alcohol content statement may not be abbreviated, but shall use the complete words "alcohol," "volume," or "weight". The words in the alcohol content statement must appear:
(i) in capital letters and bold type;
(ii) in a solid contrasting background;
(iii) in a format that is readily legible; and
(iv) separate and apart from any descriptive or explanatory information.

R81-1-28. Special Commission Meetings - Fees.
(1) Authority. This rule is pursuant to 32B-2-201(10) that gives the commission authority to hold special commission meetings; and 32B-2-202(1)that gives the commission authority to establish procedures for granting and denying permits and to prescribe fees payable for permits.
(2) Purpose. This rule authorizes the commission to assess an administrative fee in addition to the regular permit fee to cover the additional administrative costs of convening a special commission meeting to consider the application of an applicant for a single event permit or temporary special event beer permit who failed to timely submit the permit application to be considered at the commission's regularly scheduled monthly meeting.
(3) Application of Rule.
(a) If the commission agrees to convene a special commission meeting to accommodate an applicant described in Section (2), the commission shall assess an administrative fee of $350 in addition to the regular permit fee.
(b) The administrative fee in Section (3)(a) shall be used to offset the costs of convening the special meeting including, but not limited to:
(i) department costs associated with scheduling, arranging, and providing notice of the special meeting;
(ii) department costs associated with any emergency or electronic meeting held pursuant to R81-1-19 and -20;
(iii) payment of per diem and expenses to commissioners; and
(iv) any other costs incurred.
(c) The administrative fee in Section (3)(a) shall be paid prior to the convening of the special commission meeting.
(d) The administrative fee in Section (3)(a) is a non-refundable fee.

R81-1-29. Factors for Granting Licenses.
(1) Definition. For purposes of this rule, "license" includes a license, permit, certificate of approval, and package agency.
(2) Authority. This rule is pursuant to 32B-2-202(1)(c)which gives the commission the authority to set policy by written rules that establish criteria and procedures for granting a license. It is also based on 32B-5-203(2)(f) that gives the commission the authority to consider non-statutory factors or circumstances the commission considers necessary in granting a license.
(3) Purpose. This rule provides a list of non-statutory factors the commission considers in granting a license.
(4) Application of Rule. In addition to any statutory factor for granting a license, the commission also may consider the following non-statutory factors:
(a) availability of retail licenses under a quota;
(b) length of time the applicant has waited for a retail license;
(c) the scheduled opening date;
(d) whether the applicant is a seasonal business;
(e) whether the location has been previously licensed or is a new location;
(f) whether the application involves a change of ownership of an existing location;
(g) whether the applicant holds other alcohol licenses at this or other locations;
(h) whether the applicant has a violation history or a pending violation;
(i) projected alcohol sales as it relates to the extent to which the retail alcohol license will be utilized;
(j) whether the applicant is a small or entrepreneurial business that would benefit the community in which it would be located;
(k) nature of entertainment the applicant proposes; and
(l) public input in support or opposition to granting the retail license.

R81-1-30. Draft Beer Sales/Minors on Premises.
A state license that authorizes the sale of beer on the premises also authorizes the licensee to sell beer on draft regardless of the nature of the business (e.g. cafe, restaurant, pizza parlor, bowling alley, golf course clubhouse, club, tavern, etc.). Minors may not be precluded from establishments based upon whether draft beer is sold. However, minors may not be employed by or be on the premises of any establishment or portion of an establishment which is a "tavern" as defined in Section 32B-1-102(112). This does not preclude local authorities and licensees from excluding minors from premises or portions of premises which have the atmosphere or appearance of a "tavern" as so defined.

R81-1-31. Duties of Commission Subcommittees.
(1) This rule is promulgated pursuant to Section 32B-2-201.5 and shall govern the duties of the two commission subcommittees, Compliance Licensing and Enforcement Subcommittee and the Operations and Procurement Subcommittee.
(2) The Compliance Licensing and Enforcement Subcommittee will review and discuss items related to compliance, licensing and enforcement and make recommendations to the full commission on those items.
(3) The Operations and Procurement Subcommittee will review and discuss items related to operations and procurement and make recommendations to the full commission on those items.
(4) If a quorum of the full commission is present, the subcommittee may act on all agenda action items.
(5) If a quorum of the full commission is not present, a recommendation on action items can be presented to a quorum of the commission for action without discussion if:
(a) A quorum of the subcommittee is present;
(b) There is a unanimous vote on the recommendation; and
(c) A member of the full commission does not request discussion on the items of recommendation.
(6) A subcommittee quorum is the majority of standing members.

R81-1-32. Further Application.
(1) If an applicant has at any time been denied a license or permit based on the locality within which the proposed licensed premises is located, no further application from the applicant pertaining to the same premises or building location shall be considered unless the applicant submits a report evidencing a

substantial change in the circumstances that previously caused the denial, of an application.

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

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

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

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

KEY: alcoholic beverages
June 24, 2015 **32B-2-201(10)**
Notice of Continuation May 2, 2016 **32B-2-202**
32B-2-204
32B-2-206
32B-3-203(3)(c)
32B-3-205(2)(b)
32B-5-304
32B-1-305
32B-1-306
32B-1-307
32B-1-607
32B-1-304(1)(a)
32B-6-702
32B-6-805(3)
32B-9-204(4)
32B-4-414(1)(b) and ©

R81. Alcoholic Beverage Control, Administration.
R81-2. State Stores.
R81-2-1. Reserved.
Reserved.

R81-2-2. Liquor Returns, Refunds and Exchanges.
(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.
(2) Application of Rule.
(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The department will accept for refund or exchange liquor merchandise that is unsaleable subject to the following conditions and restrictions:
(i) Returns of unsaleable merchandise are subject to approval by the store manager to verify that the product is indeed defective.
(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the department may not be returned.
(iii) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.
(b) Saleable Product. Store managers are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:
(i) Returns of saleable merchandise are subject to approval by the store manager. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the store manager.
(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition. Returns of $50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of $50.00 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.
(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the store manager has personal knowledge of how they have been handled and stored.
(iv) If the total amount of the return is more than $500 the store manager shall fill out a A Returned Merchandise Acknowledgment Receipt (LQ-45), and submit a copy to the office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.
(v) If the total value of the returned merchandise is more than $1,000, a 10% restocking fee shall be charged on the total amount.
(c) Unreturnable Products. The following items may not be returned:
(i) All limited item wines - wines that are available in very limited quantities.
(ii) Any products that have been chilled, over-heated, or label-damaged.
(iii) Outdated (not listed on the department's product/price list) and discontinued products.
(iv) Merchandise purchased by catering services.
(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

R81-2-3. Warning Sign.
All state stores shall display in a prominent place a "warning sign" as defined in R81-1-2.

R81-2-4. Identification Guidelines to Purchase Liquor.
The department accepts only four forms of identification to establish proof of age for the purchase of liquor by customers:
(1) A current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;
(2) A current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, Identification Card Act, or issued by another state that is substantially similar to this state's identification card;
(3) A current valid military identification card that includes date of birth and has a picture affixed; or
(4) A current valid passport.
If a person's age is still in question after presenting proof of age, the department may require the person to also sign a "statement of age" form as provided in 32B-1-405. The form shall be filed alphabetically by the close of the business day, and shall be maintained on file for a period of three years.

R81-2-5. Advertising.
The advertising or promotion of liquor products within state stores is prohibited. An employee may inform the customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.

R81-2-6. Refusal of Service.
An employee of the store may refuse to sell liquor to any person whom the employee has reason to believe is purchasing or attempting to purchase liquor in violation of Utah Alcoholic Beverage Control laws. The employee may also detain the person and hold the person's form of identification in a reasonable manner and for a reasonable length of time for the purpose of informing a peace officer of a suspected violation.

R81-2-7. Minors on Premises.
No person under the age of 21 years may enter a state liquor store unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the state liquor store.

R81-2-8. Payment for Liquor.
(1) Accepting Licensee Payments: Pursuant to 32B-5-303(1)(c), this rule requires that payments collected from licensees for the purchase of liquor come from the licensee and authorizes the agency to make internal department policies in accordance with 32B-2-206(1), (2) and (5) for the acceptance of payments for liquor.

R81-2-9. Reserved.
Reserved.

R81-2-10. State Store Hours.
(1) Authority and purpose: As authorized by 32B-2-503(5)(b), this rule establishes the days and hours for state

stores operations.

(2) Authorized days of operation: State stores may not operate on any day prohibited by 32B-2-503(5)(a).

(3) Authorized hours of operation: Pursuant to 32B-2-202(1) (b) and (k) and in accordance 32B-2-206(1) and(2), this rule authorizes the director to set hours of operations for each state store and establish internal department policies for sales during operational hours based on the following factors.

(a) the locality of the store;
(b) tourist traffic;
(c) demographics;
(d) population to be served;
(e) customer demand in the area;
(f) whether the store is designed for licensee sales; and
(g) budgetary constraints.

R81-2-11. Industry Members in State Stores.

An industry member, as defined in 32B-4-702, shall be limited to the customer areas of a state store except as follows:

(1) An industry member may be allowed in the storage area of a state store with the approval of the store manager for the limited purpose of stocking the industry member's own products; and

(2) An industry member may be allowed in the office or other suitable area of a state store with the approval of the store manager for the purpose of discussing the industry member's products.

R81-2-12. Store Site Selection.

This rule is promulgated pursuant to Section 32B-2-202(1)(c)(ii) which requires that criteria and procedures be established for determining the location of a state store: Prior to the commission establishing a new state store, the Operations and Procurement Subcommittee will determine the feasibility of a new site, weigh options and consider the investigation and recommendation of the department as outlined in 32B-2-502 then make its recommendation to the commission.

KEY: alcoholic beverages
December 24, 2015 **32B-2-202**
Notice of Continuation May 2, 2016

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-1. Definitions.

Package agencies are retail liquor outlets operated by private persons under contract with the department for the purpose of selling packaged liquor from facilities other than state liquor stores for off premise consumption. Package agencies are classified into five types:

Type 1 - A package agency under contract with the department which is operated in conjunction with a resort environment (e.g., hotel, ski lodge, summer recreation area).

Type 2 - A package agency under contract with the department which is in conjunction with another business where the primary source of income to the operator is not from the sale of liquor.

Type 3 - A package agency under contract with the department which is not in conjunction with another business, but is in existence for the main purpose of selling liquor.

Type 4 - A package agency under contract with the department which is located within a facility approved by the commission for the purpose of selling and delivering liquor to tenants or occupants of specific rooms which have been leased, rented, or licensed within the same facility. A type 4 package agency shall not be open to the general public. A type 4 package agency may also sell liquor other than in a sealed container (i.e. by the drink) as part of room service.

Type 5 - A package agency under contract with the department which is at a manufacturing facility that has been granted a manufacturing license by the commission.

The commission may grant type 4 package agency privileges to a type 1 package agency.

R81-3-2. Change of Location.

Any change of package agency location must be requested in writing and approved in advance by the commission.

R81-3-3. Bonds.

(1) No part of any surety bond required in Section 32B-2-604, may be withdrawn during the time the package agency contract is in effect. If the package agent fails to maintain a valid surety bond, the package agency contract shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in an automatic rescission of the package agency contract.

(2) A bond will be issued through the department for type 2 and 3 agencies.

R81-3-4. Change of Package Agent.

Pursuant to Section 32B-2-605(2), any change of the package agent designated in the department's package agency agreement is a violation of these rules and shall result in the immediate termination of the package agency contract.

R81-3-5. Reserved.

Reserved.

R81-3-6. Liquor Returns, Refunds and Exchanges.

(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.

(2) Application of Rule.

(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The department will accept for refund or exchange, liquor merchandise that is unsaleable subject to the following conditions and restrictions:

(i) Returns of unsaleable merchandise are subject to approval by the package agent to verify that the product is indeed defective.

(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the department may not be returned.

(iii) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

(b) Saleable Product. Package agents are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:

(i) Returns of saleable merchandise are subject to approval by the package agent. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the package agent.

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition. Returns of $50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of $50.00 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the package agent has personal knowledge of how they have been handled and stored.

(iv) If the total amount of the return is more than $500 the package agent shall fill out a "Returned Merchandise Acknowledgment Receipt" (LQ-45), and submit a copy to the office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.

(v) If the total value of the returned merchandise is more than $1,000, a 10% restocking fee shall be charged on the total amount.

(c) Unreturnable Products. The following items may not be returned:

(i) All limited item wines - wines that are available in very limited quantities.

(ii) Any products that have been chilled, over-heated, or label-damaged.

(iii) Outdated (not listed on the department's product/price list) and discontinued products.

(iv) Merchandise purchased by catering services.

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

R81-3-7. Warning Sign.

All package agencies shall display in a prominent place a "warning sign" as defined in R81-1-2.

R81-3-8. Identification Guidelines to Purchase Liquor.

All package agencies shall accept only four forms of

identification to establish proof of age for the purchase of liquor by customers:

(1) A current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act or in accordance with the laws of another state;

(2) A current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, Identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(3) A current valid military identification card that includes date of birth and has a picture affixed; or

(4) A current valid passport.

If a person's age is still in question after presenting proof of age, the package agency may require the person to also sign a "statement of age" form as provided in 32B-1-405. The form shall be filed alphabetically by the close of business day, and shall be maintained on file for a period of three years.

R81-3-9. Promotion and Listing of Products.

(1) An operator or employee of a Type 1, 2, or 3 package agency, as defined in R81-3-1, may not promote a particular brand or type of liquor product while on duty at the package agency. An operator or employee may inform a customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.

(2) A package agency may not advertise alcoholic beverages on billboards except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide informational signs on the premises of the hotel or resort directing persons to the location of the hotel's or resort's Type 1 package agency;

(b) a Type 2 package agency, as defined in R81-3-1, may provide informational signs on the premises of its business directing persons to the location of the Type 2 package agency within the business; and

(c) a Type 5 package agency, as defined in R81-3-1, may advertise the location of the winery, distillery, or brewery and the Type 5 package agency, and may advertise the alcoholic beverage products produced by the winery, distillery, or brewery and sold at the Type 5 package agency under the guidelines of R81-1-17 for advertising alcoholic beverages.

(3) A package agency may not display price lists in windows or showcases visible to passersby except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide a price list in each guest room of the hotel or resort containing the code, number, brand, size and price of each item it carries for sale at the Type 1 package agency;

(b) a Type 4 package agency, as defined in R81-3-1, may provide a price list of the code number, brand, size, and price of each item it carries for sale to the tenants or occupants of the specific leased, rented, or licensed rooms within the facility; and

(c) a Type 5 package agency, as defined in R81-3-1, may provide a price list on the premises of the winery, distillery, or brewery, authorized tasting room, and at the entrance of the Type 5 package agency of the code, number, brand, size, and price of each liquor item it carries for sale at the Type 5 package agency.

R81-3-10. Non-Consignment Inventory.

Type 1, 4 and 5 package agencies shall be on a non-consignment inventory status where the agency owns the inventory.

R81-3-11. Application.

(1) No application for a package agency will be included on the agenda of a monthly commission meeting for consideration for issuance of a package agency contract until:

(a) The applicant has first met all requirements of Sections 32B-1-304 to 307 (qualifications to be a package agent), and 32B-2-602 and -604 and 32B-6-204 have been met (submission of a completed application, payment of application fee, written consent of local authority, evidence of proximity to certain community locations, a bond, a floor plan, and public liability insurance); and

(b) the department has inspected the package agency premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the 10th day of the month will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-3-12. Evaluation Guidelines of Package Agencies.

(1) The commission, after considering information from the applicant for the package agency and from the department, shall determine whether the package agency shall be classified and operated as a Type 1, 2, 3, 4, or 5 package agency,

(2) After a package agency has been classified and issued, a package agent or the department may request that the commission approve a change in the classification of the package agency. Information shall be forwarded to aid in its determination. If the commission determines that the package agency should be reclassified, it shall approve the request.

(3) Type 2 and 3 package agencies shall:

(a) serve a population of at least 6,000 people comprised of both permanent residents and tourists; and

(b) not be established or maintained within a one mile radius of another type 2 or 3 package agency unless it can be clearly demonstrated that it is in the best interest of the state to establish and maintain the outlet at that location.

(4) The department shall report to the commission on package agency operations as a regular agenda item at each monthly commission meeting. Any significant issues with respect to the operations of a particular package agency shall also be reported to the commission. Recommended closure by the department of a package agency due to payment delinquencies over 30 working days, significant inventory shortages, or any other significant operational deficiencies shall be calendared for the commission's consideration at its next regular monthly meeting or at a special meeting.

R81-3-13. Operational Restrictions.

(1) Hours of Operation.

(a) Type 1, 2, and 5 package agencies may operate from 10:00 a.m. until 12:00 midnight, Monday through Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. Type 2 agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law. Type 5 package agencies may, in the discretion of the package agent, be open as early as 8:00 a.m. for sales to licensees with the approval of the department. Type 5 package agencies may also be open on Sundays and state and federal holidays if the package agency is located at a manufacturing facility licensed by the commission and the manufacturing facility holds a full-service restaurant license, a limited-service restaurant license, a beer-only restaurant license, or a dining club license.

(b) Type 3 package agencies may operate from 10:00 a.m. until 10:00 p.m., Monday through Saturday, but may remain

closed on Mondays in the discretion of the package agent. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department, provided the agency operates at least seven hours a day.

(c) Type 4 package agencies may operate from 10:00 a.m. until 1:00 a.m., Monday through Friday, and 10:00 a.m. until 12:00 midnight on Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. A Type 4 package agency in a resort that is licensed under 32B-8, may operate 24 hours a day, Monday through Sunday to provide room service to guests of the resort.

(d) Any change in the hours of operation of any package agency requires prior department approval, and shall be submitted in writing by the package agent to the department.

(e)(i) A package agency shall not operate on a Sunday or legal holiday except to the extent authorized by 32B-2-605(13) which allows the following to operate on a Sunday or legal holiday:

(A) a package agency located in certain licensed wineries, breweries, and distilleries; and

(B) a package agency held by a resort that is licensed under 32B-8 that does not sell liquor in a manner similar to a state store which is limited to a Type 4 package agency.

(ii) If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by a Type 2 and 3 package agency.

(2) Size of Outlet. The retail selling space devoted to liquor sales in a type 2 or 3 package agency must be at least one hundred square feet.

(3) Inventory Size. Type 2 and 3 package agencies must maintain at least fifty code numbers of inventory at a retail value of at least five thousand dollars and must maintain a representative inventory by brand, code, and size.

(4) Access to General Public. Type 1, 2, and 3 package agencies must be easily accessible to the general consuming public.

(5) Purchase of Inventory. All new package agencies, at the discretion of the department, will purchase and maintain their inventory of liquor.

R81-3-14. Type 5 Package Agencies.

(1) Purpose. A type 5 package agency is for the limited purpose of allowing a winery, distillery, or brewery to sell at its manufacturing location the packaged liquor product it actually produces to the general public for off-premise consumption. This rule establishes guidelines and procedures for type 5 package agencies.

(2) Application of Rule.

(a) The package agency must be located at a manufacturing facility that has been granted a manufacturing license by the commission. For purpose of this rule, a manufacturing facility includes the parcel of land and/or building(s) leased or owned by the manufacturing licensee immediately surrounding the manufacturing premise.

(b) The package agency may only sell products produced at the winery, distillery, or brewery, and may not carry the products of other alcoholic beverage manufacturers.

(c) The product produced by the winery, distillery, or brewery and sold in the type 5 package agency need not be shipped from the winery, distillery, or brewery to the department warehouse and then back to the package agency. The bottles for sale may be moved directly from the manufacturer's storage area to the package agency provided that proper record-keeping is maintained on forms provided by the department. Records required by the department shall be kept current and available to the department for auditing purposes. Records must be maintained for at least three years. The package agency shall submit to the department a completed monthly sales report form which specifies the variety and number of bottles sold from the package agency. This report must be submitted to the department within the first five working days of the month. A club or restaurant purchases form must be filled out for every licensee purchase.

(d) Direct deliveries to licensees are prohibited. Products must be purchased and picked up by the licensees or their designated agents at the Type 5 package agency.

(e) The type 5 package agency shall follow the same laws, rules, policies, and procedures applicable to other package agencies as to the retail price of products.

(f) The days and hours of sale of the type 5 package agency shall be in accordance with 32B-2-605(13) and R81-3-13.

R81-3-15. Refusal of Service.

An employee of the package agency may refuse to sell liquor to any person whom the employee has reason to believe is purchasing or attempting to purchase liquor in violation of the Utah Alcoholic Beverage Control laws. The employee may also detain the person and hold the person's form of identification in a reasonable manner and for a reasonable length of time for the purpose of informing a peace officer of a suspected violation.

R81-3-16. Minors on Premises.

No person under the age of 21 years may enter a package agency unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the package agency.

R81-3-17. Consignment Inventory Package Agencies.

(1) Purpose. At the discretion of the department, liquor may be provided by the department to a Type 2 and Type 3 package agency for sale on consignment pursuant to 32B-2-605(5). This rule provides the procedures for such consignment sales.

(2) Application of the Rule.

(a) Consignment Inventory.

(i) The initial amount of consignment inventory furnished to the package agency shall be established by the department's audit manager.

(ii) The consignment inventory amount shall be posted to the department's accounting system as "Consignment Inventory Account."

(iii) The consignment inventory amount shall be stated in the department's contract with the package agency.

(iv) Any adjustment to the consignment inventory amount shall be done through the use of a transfer, shipment, or payment of money. A copy of the transfer, adjusting shipment, or evidence of payment shall be included in the package agency's file.

(v) The consignment inventory amount may be adjusted from time to time based on the package agency's monthly average sales. Any adjustment shall be made by a properly executed amendment to the department's contract with the package agency.

(b) Payments.

(i) All agencies receiving shipments or transfers are required to have an ACH (Automated Clearing House) payment system set up with the department.

(ii) Statements showing all unpaid debts and unapplied credits will be generated and mailed to the agencies on the 20th or the next available working day of each month. It is the agent's responsibility to review the statement and contact the department with any discrepancies prior to due date of payment.

(iii) Agents will remit payment to the department on the 19th or next available working day of the following month after

the last statement was generated. Payment will be for the statement total. Payment will be automatically drawn through the ACH process on the due date unless prior arrangements have been made between the agent and the department.

(iv) Insufficient funds, returned checks, and unpaid balances from a previous statement are all past due. The department may assess the legal rate of interest on the amount owed. Also, the package agency may be referred to the commission for possible termination of the contract and closure.

(v) All delivery discrepancies shall be resolved through the use of the LQ9 form. Debits or credits shall be issued based on proper completion and submission of the LQ9 form to the department. Payment shall be made in accordance with the agency's statement by the due date whether or not any discrepancies have been resolved.

(c) Transfers.

(i) Transfers (+ or -) shall be adjusted to the package agency's next payment due the department.

(ii) Transfer in will add to the amount owed to the department on the next check due to the department.

(iii) Transfer out will subtract from the amount owed to the department on the next check due to the department.

(d) Credit and Debit Card Credits.

(i) Credit for credit and debit cards processed at the agency will be posted to the agency's statement.

(ii) It is the agent's responsibility to mail in their settlement report and individual receipts to the department in order to receive credit.

(e) Audits.

(i) Any package agency that is on a consignment contract shall keep a daily log of sales.

(ii) The auditing division shall audit the package agency at least twice each fiscal year.

(iii) The package agency is subject to a department audit at any time.

R81-3-18. Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to 32B-2-303, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters. except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine as one form of room service sales by Type 4 package agencies located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from a Type 4 package agency. Special orders may be placed with the department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The Type 4 package agency must order in full case lots, and all sales are final.

(c) If the hotel/resort has a Type 1 package agency with Type 4 privileges, the smaller bottle sized products must be stored in a secure area separate from the Type 1 agency inventory.

(d) Sale and use of alcohol in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel/resort, and may not be used for other purposes, or be sold to the general public.

(e) Failure of the Type 4 package agency to strictly adhere to the provisions of this rule is grounds for the department to terminate its contract with the Type 4 package agency.

R81-3-19. Reserved.

Reserved.

R81-3-20. Type 4 Package Agency Room Service - Dispensing.

(1) A Type 4 package agency that sells liquor other than in a sealed container (i.e. by the drink) as part of room service, shall dispense liquor in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems).

(2) A Type 4 package agency located in a hotel or resort facility that has a retail license or sublicense may provide room service of liquor in other than a sealed container through the dispensing outlet of the retail license or sublicense under the following conditions:

(a) point of sale control systems must be implemented that will record the amounts of alcoholic beverage products sold by the retail license or sublicense on behalf of the Type 4 package agency;

(b) the alcoholic beverage product cost must be allocated to the Type 4 package agency on at least a quarterly basis pursuant to the record keeping requirements of Section 32B-5-302;

(c) dispensing of alcoholic beverages from a retail license or sublicense location may not be made at prohibited hours pertinent to that license or sublicense type;

(d) A Type 4 package agency held by a resort licensee that operates seven days a week, 24 hours per day, must have a separate dispensing outlet for use during the times that a sublicense is not allowed to sell liquor.

KEY: alcoholic beverages

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	32B-2-605(13)(b)

R81. Alcoholic Beverage Control, Administration.
R81-4A. Restaurant Liquor Licenses.
R81-4A-1. Licensing.

(1) Restaurant liquor licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

(2) A restaurant liquor licensee that wishes to operate the same licensed premises under the operational restrictions of a recreational amenity on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate recreational amenity on-premise beer retailer license subject to the following:

(a) The same restaurant licensee must separately apply for a state recreational amenity on-premise beer retailer license pursuant to the requirements of Sections 32B-5-201, -202 and 32B-6-702 through -705.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Restaurant liquor licensees holding a separate recreational amenity on-premise beer retailer license must operate in accordance with 32B-6-706 and R81-10A during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the restaurant premises shall be deemed to remain on the floor plan of the restaurant premises and shall be kept locked during the hours the recreational amenity on-premise beer retailer license is active.

R81-4A-2. Application.

(1) No license or sublicense application will be included on the agenda of a monthly commission meeting for consideration for issuance of a restaurant license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-204 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a full service restaurant, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); 32B-6-206 (requirements for a master full service restaurant license); and

(b) the department has inspected the restaurant premise(s).

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

(3) Subsection (1)(a) does not preclude the commission from considering an application for a conditional restaurant license under the terms and conditions of 32B-5-205.

(4) Applicants may apply for a Master Full Service Restaurant License as defined by 32B-6-206 so long as five or more locations are indicated as sublicenses on the application.

(a) The five locations must be owned by the same person or entity.

(b) Locations that do not already have a full service restaurant license must meet all requirements for licensing as a full service restaurant under subsection (1).

(c) Once the master license is granted, the licensee may add additional locations by filing an application approved by the department demonstrating that the location meets all application requirements under section (1).

R81-4A-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-204(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4A-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4A-5. Restaurant Liquor Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a restaurant liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4A-6. Restaurant Liquor Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-205(6). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4A-7. Sale and Purchase of Alcoholic Beverages.

(1) Alcoholic beverages (including light beer) may be furnished after the licensee or their employee confirms that the patron has the intent to order food that is prepared and sold for consumption on site. An order for food may not include food items normally provided to patrons without charge. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-205(4), shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-205(7).

(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(3) Liquor dispensing shall be in accordance with Section 32B-5-304; Section R81-1-9 (Liquor Dispensing Systems), and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-4A-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the restaurant as approved by the department.

R81-4A-9. Alcoholic Product Flavoring.

Restaurant liquor licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the restaurant liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-4A-10. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the restaurant or carried in by a patron. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

R81-4A-11. Consumption at Patron's Table, Counter, and "Grandfathered Bar Structure".

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table, counter, or "grandfathered bar structure so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

R81-4A-12. Menus; Price Lists.

(1) Contents of Alcoholic Beverage Menu.

(a) Each licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4A-13. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4A-14. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own alcoholic beverages under the following circumstances:

(1) When the entire restaurant is closed to the general public for the private event, or

(2) When an entire room or area within the restaurant such as a private banquet room is closed to the general public for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the restaurant.

R81-4A-15. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32B-6-202 which provides that:

(i) a bar structure, as defined in 32B-1-102(7), located in a currently licensed restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May

12, 2009:

(A) a person has applied for a restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32B-6-202 which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-202(1)(a)(ii)(A)(I) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32B-6-202(1)(b) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages

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	32B-6-202
	32B-6-206

R81. Alcoholic Beverage Control, Administration.
R81-5. Club Licenses.
R81-5-1. Licensing.

(1) Club liquor licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

(2) (a) At the time the commission grants a club license the commission must designate whether the club qualifies to operate as an equity, fraternal, dining, or social club based on criteria in 32B-6-404.

(b) After any club license is granted, a club may request that the commission approve a change in the club's classification in writing supported by evidence to establish that the club qualifies to operate under the new class designation based on the criteria in 32B-6-404.

(c) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(d) If the commission determines that the club has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the commission shall approve the request.

(e)(i) Pursuant to 32B-6-409, a dining club licensee may convert its dining club license to a different type of retail license for which the dining club licensee qualifies. However, the conversion must occur between July 1, 2011 and June 30, 2013.

(ii) The dining club licensee shall request the conversion in writing supported by evidence to establish that the club qualifies to operate under the new retail license based on the statutory criteria for that type of license.

(iii) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(iv) If the commission determines that the club has provided credible evidence to establish that it meets the statutory criteria to operate under the new retail license, the commission shall approve the request.

(v) After the conversion, the licensee must then operate under the provisions relevant to the type of retail license to which the club converted. If the dining club is converted to a full-service restaurant, limited-service restaurant, or beer-only restaurant, the bar structure of the dining club is considered a seating grandfathered bar structure for purposes of a full-service restaurant or limited-service restaurant license, or a grandfathered bar structure for purposes of a beer-only restaurant license.

(vi) Such conversions will not be counted against any quota for the type of retail licensee to which the club converted.

(3)(a) A dining club must operate as described in 32B-6-404(3), and must maintain at least 60% of its total club business from the sale of food, not including mix for alcoholic beverages, and service charges.

(b) A dining club shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(c) If any inspection or audit discloses that the sales of food are less than the required percentage for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed the required percentage. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission, or alternatively, to determine why the license should not be immediately reclassified by the commission as a social club. If the commission grants a reclassification to a social club, the reclassification shall remain in effect until the licensee files a request for and receives approval from the commission to be reclassified a dining club. The request shall provide credible evidence to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed the required percentage.

(1) Club licensees with a Fraternal Club classification as of July 1, 2013 may allow guests that are over 21 without a host as long as long as the practice is allowed in the bylaws of the Fraternal Club and the Fraternal Club maintains at least 60% of its total business from the sale of food pursuant to Section 32B-6-407(10)(c)(i-iii).

(a) The Fraternal Club shall notify the department of the intent to allow guests without a host by providing a copy of the bylaws.

(b) The Fraternal Club shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(c) If any inspection or audit discloses that the sales of food are less than 60% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 60%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine if the Fraternal Club may continue to allow guests without a host.

R81-5-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a club license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-405 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation as the type of club license requested on the application, evidence of proximity to certain community locations, evidence that the applicant meets the requirements for the type of club license for which the person is applying, evidence that a variety of food is prepared and served in connection with dining accommodations, a bond, a floor plan, public liability and liquor liability insurance, and if an equity or fraternal club a copy of the club's bylaws or house rules and any amendment to those records); and

(b) the department has inspected the club premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-5-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-405(5) may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-5-4. Insurance.

Public liability and dram shop insurance coverage required in Subsections 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-5-6. Club Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a club liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-5-7. Club Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-406(4). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-5-8. Sale and Purchase of Alcoholic Beverages.

(1) A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab.

(2) Liquor dispensing shall be in accordance with Section 32B-5-304; and Sections R81-1-9 (Liquor Dispensing Systems) and R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-5-9. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the club as approved by the department.

R81-5-10. Alcoholic Product Flavoring.

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the club liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No club employee under the age of 21 years may handle alcoholic product flavorings.

R81-5-11. Price Lists.

(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any amounts charged by the licensee for the service of packaged liquor, wine or heavy beer. A copy shall be kept on the club premises and available at all times for examination by patrons of the club.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.

(3) Customers shall be notified of the price charged for any packaged liquor, wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-5-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-5-13. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed club, the proprietor may, in his or her discretion, allow members of the private group to bring onto the club premises, their own alcoholic beverages under the following circumstances:

(1) When the entire club is closed to regular patrons for the private event, or

(2) When an entire room or area within the club such as a private banquet room is closed to regular patrons for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with regular patrons of

the club.

R81-5-14. Membership Fees and Monthly Dues.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32B-6-407 that equity and fraternal clubs operate in a manner that preserves the concept that they are private and not open to the general public.

(3) Application of Rule.

(a) Each equity and fraternal club shall establish in its by-laws membership application fees and monthly membership dues in amounts determined by the club.

(b) An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.

R81-5-15. Minors in Lounge or Bar Areas.

(1) Pursuant to 32B-6-406(5), a minor may not be admitted into, use, or be on the premises of any lounge or bar area of an equity, fraternal, or dining club. A minor may not be on the premises of a social club except to the extent allowed under 32B-6-406.1, and may not be admitted into, use, or be on the premises of any lounge or bar area of a social club.

(2) "Lounge or bar area" includes:

(a) the bar structure as defined in 32B-1-102(7);

(b) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(c) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

(3) A minor who is otherwise permitted to be on the premises of an equity, fraternal, or dining club may momentarily pass through the club's lounge or bar area en route to those areas of the club where the minor is permitted to be. However, no minor shall remain or be seated in the club's bar or lounge area.

R81-5-18. Age Verification - Dining and Social Clubs.

(1) Authority. 32B-1-402, -405, and -407.

(2) Purpose.

(a) 32B-1-407 requires dining and social club licensees to verify proof of age of persons who appear to be 35 years of age or younger either by an electronic age verification device, or an acceptable alternate process established by commission rule.

(b) This rule:

(i) establishes the minimum technology specifications of electronic age verification devices; and

(ii) establishes the procedures for recording identification that cannot be electronically verified; and

(iii) establishes the security measures that must be used by the club licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by Title 32B.

(3) Application of Rule.

(a) An electronic age verification device:

(i) shall contain:

(A) the technology of a magnetic stripe card reader;

(B) the technology of a two dimensional ("2d") stack symbology card reader; or

(C) an alternate technology capable of electronically verifying the proof of age;

(ii) shall be capable of reading:

(A) a valid state issued driver's license;

(B) a valid state issued identification card;

(C) a valid military identification card; or

(D) a valid passport;

(iii) shall have a screen that displays no more than:

(A) the individual's name;

(B) the individual's age;

(C) the number assigned to the individual's proof of age by the issuing authority;

(D) the individual's the birth date;

(E) the individual's gender; and

(F) the status and expiration date of the individual's proof of age; and

(iv) shall have the capability of electronically storing the following information for seven days (168 hours):

(A) the individual's name;

(B) the individual's date of birth;

(C) the individual's age;

(D) the expiration date of the proof of age identification card;

(E) the individual's gender; and

(F) the time and date the proof of age was scanned.

(b) An alternative method of verifying an individual's proof of age when proof of age cannot be scanned electronically:

(i) shall include a record or log of the information obtained from the individual's proof of age including the following information:

(A) the type of proof of age identification document presented;

(B) the number assigned to the individual's proof of age document by the issuing authority;

(C) the expiration date of the proof of age identification document;

(D) the date the proof of age identification document was presented;

(E) the individual's name; and

(F) the individual's date of birth.

(c) Any data collected either electronically or otherwise:

(i) may be used by the licensee, and employees or agents of the licensee, solely for the purpose of verifying an individual's proof of age;

(ii) may be acquired by law enforcement, or other investigative agencies for any purpose under Sections 32B-6-406 - 407;

(iii) may not be retained by the licensee in a data base for mailing, advertising, or promotional activity;

(iv) may not be retained to acquire personal information to make inappropriate personal contact with the individual; and

(v) shall be retained for a period of seven days from the date on which it was acquired, after which it must be deleted.

(d) Any person who still questions the age of the individual after being presented with proof of age, shall require the individual to sign a statement of age form as provided under 32B-1-405.

KEY: alcoholic beverages

September 24, 2013	**32B-1-607**
Notice of Continuation May 2, 2016	**32B-2-202**
	32B-5
	32B-6-401 through 409

R81. Alcoholic Beverage Control, Administration.
R81-6. Special Use Permits.
R81-6-1. Application.

(1) No application will be included on the agenda of a monthly commission meeting for consideration for issuance of a special use permit until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the permit), and 32B-10-202 and -205 (submission of a completed application, payment of application and permit fees if required for the type of permit being sought, statement of purpose for which the applicant applies for the permit, types of alcoholic product the person intends to use under the permit, written consent of local authority, a bond if required, and a floor plan if required; and

(b) the department has inspected the restaurant premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-6-2. Warning Sign.

All public service permittees which utilize a hospitality room shall display in a prominent place therein a "warning sign" as defined in R81-1-2.

R81-6-3. Direct Delivery.

Industrial, manufacturing, scientific, educational, and health care special use permittees may purchase alcohol directly from the manufacturer and have it shipped directly to the permittee's address, provided the alcohol is used for industrial, manufacturing, scientific, educational, or health care purposes.

R81-6-4. Public Service Permittee Operating Guidelines.

(1) A public service permittee that operates on an interstate basis may purchase liquor outside of the state and bring it into the state and/or purchase liquor within the state and sell, store and serve it to passengers traveling on the permittee's public conveyance for consumption while en route on the conveyance. However, all liquor utilized within a public service permittee's hospitality room must be purchased from a state liquor store or package agency within this state.

(2) All liquor transported from outside the state to the permittee's storage facility shall be carried in sealed conveyances which may be inspected at any time by the department.

(3) A public service permittee shall keep available and open for audit during regular business hours, complete and accurate records of alcoholic product shipments to and from their storage facility. Records shall be kept for a minimum of three years.

(4) A public service permittee shall allow the department, through its auditors or examiners, to audit all records relating to the storage, sale, consumption and transportation of alcoholic products by the permittee.

R81-6-5. Educational Wine Judging Seminars.

(1) Definition of Applicant. An applicant is any person or organization who is applying for an educational wine judging seminar permit, whose purpose is to inform and educate about the qualities and characteristics of wines.

(2) Application. The applicant must meet the requirements and qualifications for a scientific or educational special use permit found in Sections 32B-1-304 and 32B-10-202, -503. In addition, the applicant must submit to the department a detailed proposal of the seminar which must include the qualifications of the judges, the number of wines being submitted by the wineries, and the location of the seminar. Additional information may be requested by the commission or department to properly evaluate the application.

(3) The applicant must post a cash or corporate surety bond in the penal sum of $1,000 payable to the department, which the permittee has procured and must maintain for as long as the permittee continues to operate as a special use permittee. The bond shall be in a form approved by the attorney general, conditioned upon the permittee's faithful compliance with the Act and the rules of the commission. If the surety bond is canceled due to the permittee's negligence, a $300 reinstatement fee may be assessed. No part of any cash bond so posted may be withdrawn during the period the permit is in effect. A bond filed by a permittee may be forfeited if the permit is finally revoked.

(4) The application for the educational wine judging seminar permit must be completed and submitted 90 days prior to the seminar date.

(5) Restrictions. Any person granted an educational wine judging seminar permit must meet the following requirements and restrictions:

(a) The techniques used in judging the wines must meet internationally accepted techniques of sensory or laboratory evaluation, and the wines used may not be consumed.

(b) All unopened bottles must be returned to the department and any wine product residual in open bottles must be destroyed by the permittee.

(c) The educational wine judging seminar permit has an automatic expiration date of three days following the scheduled ending date of the seminar.

(d) The permittee must comply with R81-1-17 regarding advertising of the seminar.

(6) Procedures for Handling the Seminar.

(a) The permittee must order all wines used in the seminar from the department. The department will order the wines from the wineries designating on the order that they are for a wine judging seminar. The permittee must make prior arrangements with the wineries to have the wines sent to the department at no charge and freight prepaid.

(b) The wines will be entered into the department accounting system at no cost and will be given a special department number, designating the wines as those to be used with an educational wine judging seminar permit and not to be consumed.

(c) The wines will be delivered to the permittee from the department. After the seminar, the permittee will return all unopened bottles of wine to the department and the permittee will destroy any other residual wine products left. The permittee will pay to the department a fee of two dollars for every bottle of wine used in the judging seminar.

(d) All wines returned to the department become the property of the state and will be destroyed under controlled conditions or will be given a new department number and sold in the state's retail outlets, which profits will be property of the state.

R81-6-6. Religious Wine Permits.

(1) Purpose. This rule outlines the procedures for a religious wine permit holder to purchase wine for religious purposes, and the procedures department personnel shall follow to process the purchase.

(2) Application of Rule.

(a) The permit holder may purchase any generally listed

wine directly off of the shelf of any state store or package agency at a charge of cost plus freight. The cashier shall first verify that the purchasing religious organization is a holder of a permit on file in the department's licensee/permittee data base. The cashier shall determine the cost plus freight price of the wine. The wine may be purchased only with cash or a check belonging to the religious organization, and not with an individual's personal check or credit card. Checks shall be deposited in the ordinary course of business with other checks.

(b) The permit holder may order wine for religious purposes directly from the winery and have the winery ship the wine prepaid at a charge of cost plus freight to the department's central administrative warehouse. The warehouse shall deliver the wine to the state store or package agency nearest to the permit holder's church. The state store or package agency shall notify the permit holder when the product is available for pick-up.

(c) The permit holder may place a special order for wines not generally listed by the department only if the winery will not sell directly to the permit holder. Special orders may be placed only with the special order clerk at the department's administrative office. No special orders may be placed with a state store or package agency. The special order clerk shall verify that the purchasing religious organization is on file in the department's licensee/permittee data base, place the order, assign it a special order code number, assess a charge of cost plus freight, and have the wine delivered to the state store or package agency nearest to the permit holder's church. The state store or package agency shall notify the permit holder when the product is available for pick-up. All procedures for processing the purchase that are outlined in (a) above shall be followed by the state store or package agency to complete the sale.

KEY: alcoholic beverages
May 22, 2012 **32A-1-107**
Notice of Continuation May 2, 2016

R81. Alcoholic Beverage Control, Administration.
R81-7. Event Permits.
R81-7-1. Authority and Purpose.

(1) Pursuant to 32B-2-202(1)(c)(i) and (1)(n), this rule establishes procedures and criteria for issuing and denying event permits in accordance with 32B-9.

R81-7-2. Definitions.

(1) "Conducting" means the conduct, management, control or direction of an event. An applicant may be deemed to be conducting the event if there is a contract in which the applicant has been designated as the agent for the event's beverage service.

R81-7-3. Application Guidelines.

(1) An event permit application will not be submitted to the Director for consideration until the requirements of Section 32B-1-304, 32B-9-201-203, -304 (for single event permits) and -405 (for temporary beer event permits) have been met, including:

(a) A complete application including all documents and supplemental materials listed on the department's application checklist has been submitted to the department one month prior to the event; and

(b) The department has conducted an investigation in compliance with 32B-9-202(1)(a).

(2) Late applications will be accepted up to 7 business days prior to the event. Late applications will be reviewed as time allows and are not subject to the provisions in R81-7-4(1)(ii) and (iii) below.

R81-7-4. Guidelines for Issuing Permits.

(1) Once submitted to the director, the application will be considered in compliance with 32B-9-202 and 303 (for single event permits) and -403 (for temporary beer event permits), including consideration of R81- 7-5 below.

(i) After consideration of the totality of the circumstances, the director will either issue a preliminary decision to issue or deny the event permit or refer the application to the commission in accordance with 32B-9-202(3).

(ii) If the director issues a preliminary decision to deny issuance of an event permit, the decision shall be provided in writing detailing the basis for the denial.

(iii) An applicant may submit a request for review by the commission within the time limits of 32B-9-202(3)(b) and (c) related to the three business day review period and regularly scheduled commission meetings. If at least three commissioners request review of the denial in compliance with 32B-9-202(3)(b) and (c), the commission shall review the request at their next regularly schedule commission meeting.

(2) In accordance with 32B-9-202(2)(d), the director may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Section 32B-9-201(4).

(3) All approvals, notifications, requests for meetings or requirements to inform under section 32B-9-202 shall be done electronically.

(4) For purposes of 32B-9-202(4), the department may provide notice to law enforcement of the preliminary approval within three business days of the event, so long as law enforcement is notified if that approval does not become final.

R81-7-5. Additional Consideration for Event Permits.

(1) Additional Consideration for Single Event Permits: In accordance with 32B-9-303(2), a single event permit is issued to entities in existence for a year or more conducting a convention, civic or community enterprise.

(a) As part of local consent required by 32B-9-201(1)(c), the locality may provide a recommendation as to whether the entity is conducting a civic or community enterprise.

(b) The director may consider the recommendation of the local authority in determining whether the entity is conducting a civic or community enterprise.

(c) Notwithstanding subsection (1), an event permit will not be issued if, based on the totality of the circumstances, it is determined that the permit is being used to circumvent other applicable requirements of 32B-9 Event Permit Act.

(2) Violation History: In accordance with 32B-9-202(2)(d), in considering the nature of the event, if there is a violation of the applicant, the event, or the venue within the last 36 months, the director will consider violation history in making a determination regarding whether to issue the permit or in determining additional controls as outlined in section (3) below.

(3) Control Measures: In accordance with 32B-9-202(2)(d), in considering the nature of the event, the director must determine that adequate and appropriate control measures will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over-served alcohol at the event.

(a) Before an event permit may be issued by the director, the following control measures must be present at the event unless relaxed by the director in accordance with section (c) below.

(i) There must be at least one location at the event where those wanting to purchase alcoholic beverages must show proof of age;

(ii) Any person assigned to check proof of age shall have completed the alcohol server training seminar outlined in 62A-15-401 in the last three years;

(iii) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where alcoholic beverages are sold and dispensed to supervise the sale and dispensing of alcoholic beverages;

(iv) The event shall be properly secured and completely delineated by some type of physical structure(s), such as fencing, walls, gates and secured entry and exits; and

(v) A minimum of one (1) security person for every fifty (50) people estimated to be in the consumption area at one time: security may include police officers, hired security, organization staff members and security volunteers.

(b) In accordance with 32B-9-202(2)(e), the following additional control measures must be present for an outdoor pubic event or a large-scale public event where minors are present, unless relaxed by the director in accordance with section (c) below.

(i) Alcoholic beverages shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages;

(ii) All dispensing and consumption of alcoholic beverages shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where alcohol consumption may be closely monitored;

(iii) The proof of age location(s) shall be separate from the alcoholic beverage sales and dispensing location(s); and

(iv) The proof of age location(s) will either issue a hand stamp and/or non-transferable wristband.

(c) The director, after reviewing the facts and circumstances of a particular event, has the discretion to relax any of the control measures outlined in Subsection (a) and (b) above or to require additional control measures as a condition of issuing an event permit provided that the director has first reasonably determined that such modification will not increase the likelihood of minors being sold or furnished alcohol or adults being over-served alcohol at the event.

KEY: alcoholic beverages, event permits
November 2, 2015 32B-2-202(1)

Notice of Continuation May 2, 2016	**32B-9-101**
	32B-9-102
	32B-9-201
	32B-9-202
	32B-9-203
	32B-9-204
	32B-9-301
	32B-9-302
	32B-9-303
	32B-9-304
	32B-9-305
	32B-9-401
	32B-9-402
	32B-9-403
	32B-9-404
	32B-9-405
	32B-9-406

R81. Alcoholic Beverage Control, Administration.
R81-8. Manufacturer Licenses (Distillery, Winery, Brewery).
R81-8-1. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a manufacturer (distillery, winery, brewery) license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 and 32B-11-205 (qualifications to hold the license), and 32B-11-203, -205 and -207 (submission of a completed application, payment of application and licensing fees, written consent of local authority, a statement of the purpose for which the applicant is applying for the license, evidence that the person is authorized by the United States to manufacture an alcoholic product, a bond, and public liability insurance); and

(b) the department has inspected the manufacturer premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-8-2. Out of State Business.

(1) Purpose. Pursuant to 32B-11-201(4), brewers located outside the state must obtain a certificate of approval from the department before selling or delivering beer containing an alcohol content of less than 4% alcohol by volume to licensed beer wholesalers in this state, or if a small brewer, to licensed beer wholesalers or retailers in this state. These certificates must be renewed annually.

In addition to issuing certificates of approval to brewers who actually produce the beer, the department has also issued certificates to (1) importers that hold federal permits, and have the contractual rights to distribute and market beer for foreign breweries; and (2) marketing agents that distribute and market beer for domestic breweries. The department has also allowed brewers with a certificate of approval to market the products on behalf of other brewers under that certificate. However, this has resulted in a loss of direct regulatory authority over the breweries that actually produce the beer.

This rule ensures that each producer of beer obtain its own certificate of approval to allow its beer to be sold or delivered in this state.

(2) Application of Rule.

(a) A certificate of approval to sell or deliver beer in this state under 32B-11-201(4) may be issued only to the company that is ultimately responsible for producing the beer. The company holding the certificate may not allow another brewery to sell or deliver beer to this state under the certificate holder's certificate. A certificate of approval may not be issued to any third party such as an importer or marketing agent that does not actually manufacture or produce alcoholic beverages.

(b) This rule does not preclude the company that holds the certificate of approval from having its brand of beer produced by another brewery under contract under the brand name of the certificate holder's company. However, the certificate holder is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the certificate holder.

(c) A distillery or winery that has beer produced for it by a brewery under contract under the distillery's or winery's brand name is deemed to be a "brewery" for purposes of 32B-11-201(4), and may be issued a certificate of approval. However, the distillery or winery is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the distillery or winery that holds the certificate.

R81-8-3. Winery Tasting Facilities.

(1) Purpose. Pursuant to 32B-11-303, a licensed winery may allow the consumption of samples of wine on the premises of the winery as long as food is available. This rule establishes guidelines for tasting facilities on winery premises.

(2) Application of Rule. A winery licensee may operate on its manufacturing premises a tasting facility allowing the consumption of wine samples at a site approved by the department under the following conditions:

(a) The tasting area must be located on the winery premises.

(b) Food must be available in the tasting area.

(c) Records required by the department shall be kept current and available to the department for auditing purposes. This includes a daily record of all products and quantities tasted.

(d) The storage area floor plan for the tasting facility must be approved by the department and may not be relocated without department approval.

(e) Wine samples may not exceed two ounces per glass.

(f) Samples may not be removed from the winery premises.

(g) Sample tastings may not be conducted off of the winery premises.

KEY: alcoholic beverages
May 22, 2012 32A-1-107
Notice of Continuation May 2, 2016

R81. Alcoholic Beverage Control, Administration.
R81-9. Liquor Warehousing Licenses.
R81-9-1. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a liquor warehouse license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-12-202, -204, and -206 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a liquor warehousing license, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the warehouse premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-9-2. Transportation.

Dual licensees, those who have both a liquor warehousing license and a beer wholesaling license, pursuant to Chapters 12 and 13 of the Act, may transport liquor, wine, and heavy beer to the department and to federal military installations within Utah.

R81-9-3. Records.

Each licensee shall keep available and open for audit at all times during regular business hours, complete and accurate records of shipments to or from their warehouse facility. Records shall be kept for a minimum of three years.

R81-9-4. Audits.

The liquor warehouse licensee shall allow the department, through its authorized representatives, to audit all records of their liquor warehouse license at times the department considers advisable.

R81-9-5. Inspection.

A liquor warehouse licensee shall permit any authorized representative of the commission, department, or any law enforcement officer unrestricted right to enter the liquor warehouse facility to inspect the premises.

KEY: alcoholic beverages

April 30, 2013	**32A-1-607**
Notice of Continuation May 2, 2016	**32B-2-202**
	32B-9

R81. Alcoholic Beverage Control, Administration.
R81-11. Beer Wholesaler Licenses.
R81-11-1. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a beer wholesaler license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-13-202, -204 and -206 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation as a beer wholesaler license, a bond, a statement of the brands of beer the applicant is authorized to sell and distribute, statement of the territories in which the applicant is authorized to sell and distribute beer under an agreement required by 32B-11-201 or 32B-11-503, and public liability insurance); and

(b) the department has inspected the beer wholesaler premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-11-2. Transfer of License.

The holder of one or more wholesaler licenses may assign and transfer the license to any qualified person in accordance with the provisions of these rules. However, no assignment and transfer may result in both a change of license and change of location.

R81-11-3. Conditions of Transfer.

(1) The holder of the wholesaler license shall first execute a proposed assignment and transfer of the license. The assignee/transferee shall apply to the commission for approval of the assignment and transfer, and shall furnish any information the commission may require.

(2) The assignment and transfer shall not be of any force and effect until the commission has approved it.

(3) The assignee/transferee shall not take possession of the premises, or exercise any of the rights of a license until the commission has approved the assignment and transfer.

(4) No assignment and transfer shall be made within thirty days after the holder of a wholesaler license has been granted a change of location.

(5) No change of location shall be granted within ninety days after assignment and transfer of a wholesaler license.

(6) In approving any assignment and transfer of a wholesaler license, the commission may impose special conditions relating to any future connection of the former licensee or any of his employees with the business of the assignee or transferee.

(a) Prior to the imposition of any special conditions, the commission shall hold a hearing to allow the former licensee or any of his employees to attend and provide information to the commission.

(b) The commission shall provide written notice to all parties involved at least ten days prior to the hearing.

(7) No wholesaler license may be assigned to any person who does not qualify for the license under Sections 32B-1-304 and 32B-13-202 and -204.

R81-11-4. Change of Trade Name.

A change of trade name may coincide with the transfer of the wholesaler license, with the commission's approval. Any licensed wholesaler may adopt a trade name or change the trade name by applying to the commission on forms provided by the department and upon receiving the commission's approval.

R81-11-5. Change in Partners.

If the wholesaler licensee is a partnership, the sale of a partnership interest or any change in partners shall be considered an assignment and transfer of the wholesaler license held by one partnership within the meaning of R81-11-3. However, if the wholesaler licensee is a partnership, and a partner should die dissolving the partnership, that partnership license shall remain in effect on a temporary basis for one month, unless or until the commission directs otherwise.

KEY: alcoholic beverages

April 30, 2013	**32A-1-607**
Notice of Continuation May 2, 2016	**32B-2-202**
	32B-13

R81. Alcoholic Beverage Control, Administration.
R81-12. Local Industry Representative Licenses (Distillery, Winery, Brewery).
R81-12-1. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a local industry representative license until the applicant has first met all requirements of Sections 32B-1-304 and 32B-11-606 (qualifications to hold the license), and 32B-11-604 (submission of a completed application, payment of application and licensing fees, verification the person is a resident of Utah, a Utah partnership, a Utah corporation, or a Utah limited liability company, and an affidavit stating the name and address of any manufacturer, supplier, or importer the person will represent.

(2)(a) All application requirements of Subsection (1) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-12-2. Industry Participation in Educational Seminars Involving Liquor, Wine and Heavy Beer Products.

(1) Authority. This rule is pursuant to 32B-4-401 and -701 to 708. These provisions preclude an industry member from selling, shipping, transporting, furnishing or supplying or causing the selling, shipping, transporting, furnishing or supplying of liquor, wine, and heavy beer products to another within this state other than the department, a military installation, a holder of a special use permit to the extent authorized in the permit, and a bonded liquor warehouse; preclude an industry member from supplying anything of value except as allowed by law; preclude an industry member from giving away any of its alcoholic products to any person except for testing, analysis, and sampling purposes by the department and local industry representative licensees to the extent authorized by the Act; allow an industry member to participate in educational seminars involving the department, retailers, holders of educational or scientific special use permits, or other industry members under certain conditions, but preclude the use of samples at such seminars; and allow an industry member to serve alcoholic products to others at a private social function hosted by the industry member so long as the product is not served as part of a promotion of the industry member's products or as a subterfuge to provide samples to others for product testing, analysis, or sampling purposes.

(2) Definitions. For purposes of this rule:

(a) "Educational seminar" means an educational class involving the study of alcoholic beverages attended only by students who have registered in advance for the course, a privately-hosted event or social function held by a private group engaged in the study of alcoholic beverages, and a private training session held by a retailer for the purpose of educating the retailer and the retailer's employees of the qualities and characteristics of alcoholic beverages. An educational seminar does not include a seminar to which the general public is invited to attend.

(b) "Industry member" means a liquor, wine or heavy beer manufacturer, supplier, importer, wholesaler, or any of its affiliates, subsidiaries, officers, directors, agents, employees, or representatives.

(c) "Private event" means a specific social, business, or recreational event for which an entire room, area, or hall is leased , rented, or reserved, in advance by an identified group, and the event is limited in attendance to people who are specifically designated and their guests. "Private event" does not include an event to which the general public is invited whether for an admission fee or not.

(d) "Retailer" means the holder of an alcoholic beverage license or permit issued by the commission to allow the holder to engage in the sale of alcoholic beverages to consumers, or any of the holder's agents, officers, directors, shareholders, partners, or employees.

(e) "Sample" means liquor, wine and heavy beer that is placed in the possession of the department for testing, analysis, and sampling by the department, or for testing, analysis, and sampling by local industry representatives on the premises of the department. Samples are furnished by industry members to the department for these purposes at no cost, and are labeled by the department as samples. Sample does not include liquor, wine and heavy beer that is sold by the department at retail after taxes and markup have been included.

(3) General Purpose. This rule authorizes industry representatives, under certain restrictions, to attend and participate in educational seminars where liquor, wine and heavy beer products are analyzed, tested, and tasted.

(4) Application of Rule.

(a) An industry member may attend and participate in an educational seminar where liquor, wine and heavy beer products are analyzed, tested, and tasted only as the invited guest of the host of the seminar. An industry member may not directly or indirectly host, organize, or otherwise arrange for an educational seminar where such products are present.

(b) Liquor, wine and heavy beer products used at an educational seminar must be purchased by the host from the department at full retail. An industry member may not directly or indirectly furnish or otherwise provide the liquor, wine and heavy beer products for the seminar. No liquor, wine or heavy beer samples may be present or used at an educational seminar. Tastings involving samples may occur only on the department's premises in accordance with Section 32B-4-705(5) and (8).

(c) An industry member may be invited by the host to lecture, and analyze, test, and taste the liquor, wine and heavy beer products during the industry member's presentation at an educational seminar.

(d) An educational seminar where liquor, wine and heavy beer products are present may not be used by an industry member to introduce retailers to new products which are not presently listed by the department for sale in this state.

(e) An educational seminar may not be open to the general public.

KEY: alcoholic beverages
May 22, 2012 **32B-4-401**
Notice of Continuation May 2, 2016 **32B-4-701 to 708**

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

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

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

(b) "Address" means:

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

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

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

(i) an assignment;

(ii) a continuation; or

(iii) a termination.

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

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

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

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

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

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

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

(A) the filer;

(B) an agent of the filer responsible for tendering the record for filing; or

(C) a service provider acting as a filer's representative in the filing process.

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

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

(i) individual debtor name(s); or

(ii) organization debtor name(s).

(k) "Secured party of record" means:

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

(ii) a person:

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

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

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

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

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

(n) "UCC record" means:

(i) an initial financing statement;

(ii) an amendment;

(iii) an assignment;

(iv) a continuation statement;

(v) a termination statement;

(vi) a filing officer statement;

(vii) an information statement; or

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

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

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

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

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

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

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

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

(A) a manufactured-home; or

(B) a public-finance transaction; or

(ii) a financing statement that is filed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Postal service delivery.

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

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

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

office is open for business.

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

(iv) Electronic mail.

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

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

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

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

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

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

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

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

(v) Telefacsimile delivery.

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

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

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

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

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

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

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

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

(vi) Electronic filing -- XML format.

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

(I) information statements; and

(II) filing officer statements.

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

(I) to become an authorized XML Remitter; and

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

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

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

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

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

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

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

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

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

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

(A) a manufactured-home; or

(B) a public-finance transaction; or

(ii) a financing statement that is filed:

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

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

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

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

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

(3) Means of communication.

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

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

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

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

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

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

R154-2-102. Search Request Delivery.

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

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

R154-2-103. Forms.

The following forms are accepted by the filing office:

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

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

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

R154-2-104. Fees.

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

R154-2-105. Expedited Service.

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

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

R154-2-106. Methods of Payment.

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

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

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

(c) Debit or credit card, if:

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

(ii) the Remitter provides the filing officer with:

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

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

R154-2-108. Public Records Services.
(1) Public records services shall be provided by the filing office on a non-discriminatory basis to any member of the public.
(2) Copies of individual UCC records, bulk copies of records, and data elements from the filing office's UCC information management system shall be made available to the public by the filing office in such forms, at such times, and for such fees as the filing office may prescribe from time to time.
(3) The filing office shall make such information regarding its prescribed forms, times, and fees as is then currently available at least weekly in every medium then available to the filing office.

R154-2-109. Fees for Public Records Services.
(1) Fees for public records services shall be established by the filing office from time to time.
(2) The filing office's fee schedule shall be available upon request.

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

R154-2-201. Accepting and Refusing Records.
(1) The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial.
(2) In acting on a UCC record filed pursuant to these rules, the filing officer does not:
(a) determine the legal sufficiency or insufficiency of the UCC record;
(b) determine that information in the record is correct or incorrect, in whole or in part; or
(c) create a presumption that information in the UCC record is correct or incorrect, in whole or in part.

R154-2-202. Time for Filing a Continuation Statement.
(1) First day permitted.
(a) The first day on which a continuation statement may be filed is the date six months prior to the date on which the related financing statement is scheduled to lapse.
(b) If no date can be generated pursuant to this Subsection R154-2-202(1)(a), the first day on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement is scheduled to lapse.
(c) Subsections R154-2-202(1)(a) and (b) are subject to:
(i) the ability of the filing office to take delivery of the continuation statement as tendered; and
(ii) the continuation statement being properly delivered to the filing office pursuant to Subsection R154-2-101.
(2) Last day permitted.
(a) The last day on which a continuation statement may be filed is the date upon which the related financing statement lapses.
(b) Subsection R154-2-202(2)(a) is subject to:
(i) the ability of the filing office to take delivery of the continuation statement as tendered; and
(ii) the continuation statement being properly delivered to the filing office pursuant to Subsection R154-2-101.
(3) In order to ensure that a continuation statement is timely filed, a Remitter shall effect delivery of the filing:
(a) on or prior to the last day permitted; and
(b) on a date and at a time when the filing office is open for business.

R154-2-203. Grounds for Refusal.
The filing office:
(1) shall refuse to accept a UCC record that does not provide an address that meets the minimum requirements as set forth in Subsection R154-2-100(1)(b); and
(2) may refuse to accept a UCC record for any one or more reasons as set forth in UCC Section 9-516.

R154-2-204. Procedure Upon Refusal.
(1) Except as provided in Subsection R154-2-107, if the filing officer finds grounds to refuse a UCC record, the filing officer shall not refund the filing fee.
(2) Communication of the refusal, the reason(s) for the refusal, and other related information shall be made to the Remitter:
(a)(i) as soon as practicable; and
(ii) no later than two business days after the refused UCC record is received by the filing office; and
(b)(i) by the same means as the means by which such UCC record was delivered to the filing office;
(ii) by mail; or
(iii) by such more expeditious means as the filing office may determine.
(3) Records of refusal, including a copy of the refused UCC record and the ground(s) for refusal, shall be maintained by the filing office.

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

R154-2-206. Notification of Defects.
(1) Nothing in these rules shall be construed or interpreted to prevent a filing officer from communicating to a filer or a Remitter any apparent potential defect(s) in a UCC record,

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

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

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

R154-2-300. UCC Information Management System.

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

R154-2-301. General Provisions.

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

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

R154-2-302. Primary Data Elements.

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

(1) Identification numbers.

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

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

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

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

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

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

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

(3) Filing date and filing time.

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

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

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

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

(6) Lapse indicator.

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

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

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

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

(7) Indexes of names.

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

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

(ii) a searchable index of individual debtor names.

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

(ii) Such an index need not be a separate database, but may be comprised of records in the UCC information management system identified to be included in such searchable index.

R154-2-303. Individual Debtor Names.

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

(2) Individual name fields.

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

(b) Separate data entry fields are established for:

(i) surnames (last or family names);

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

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

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

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

(3) Titles, prefixes, and suffixes.

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

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

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

(4) Extended debtor name field.

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

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

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

(a) Surname: 50 characters;

(b) First personal name: 50 characters;

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

(d) Suffix: 5 characters.

R154-2-304. Organization Debtor Names.

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

(2) Single field.

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

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

(3) Truncation - organization names. The organization

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

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

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

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

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

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

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

(a) the name of the trust as set forth in the trust's organic record(s), if the trust has such a name; or

(b) if the trust is not so named, the name of the trust's settlor.

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

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

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

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

R154-2-307. Initial Financing Statement.

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

(1) Status of secured party.

(a) If no assignee is named, each secured party named on an initial financing statement shall be a secured party of record.

(b) If the UCC record names an assignee:

(i) the secured party/assignor shall not be a secured party of record; and

(ii) the secured party/assignee shall be a secured party of record.

(2) Status of debtor. Each debtor name provided by the initial financing statement shall be indexed in the UCC information management system for as long as the financing statement is an Active Record.

(3) Status of financing statement.

(a) The financing statement shall be an Active Record.

(b) A lapse date shall be calculated as follows:

(i) Unless this Subsection R154-2-307(3)(b)(ii) or (iii) applies, the lapse date shall be five years from the file date.

(ii) If the initial financing statement indicates, as provided in Subsection R154-2-101(2), that it is filed with respect to a public-financing transaction or a manufactured-home transaction, the lapse date shall be thirty years from the file date.

(iii) If the initial financing statement indicates, as provided in Subsection R154-2-101(2), that it is filed against a transmitting utility, there shall be no lapse date.

R154-2-308. Amendments Generally.

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

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

(i) added to the appropriate index; and

(ii) associated with the record of the financing statement in the UCC information management system.

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

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

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

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

R154-2-309. Continuation Statement.

(1) Continuation of lapse date.

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

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

(ii) for a period of five years.

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

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

(a) any party to the financing statement; or

(b) the financing statement.

R154-2-310. Termination.

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

(1) any party to the financing statement; or

(2) the status of the financing statement.

R154-2-311. Information Statement.

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

(1) any party to the financing statement;

(2) the status of the financing statement itself; or

(3) the data maintained in the UCC information management system.

R154-2-312. Procedure upon Lapse.

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

R154-2-313. Removal of Record.

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

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

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

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

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

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

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

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

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

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

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

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

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

R154-2-402. Data Entry.

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

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

R154-2-403. Verification of Data Entry.

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

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

R154-2-404. Master Amendments.

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

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

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

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

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

R154-2-405. Notice of Bankruptcy.

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

R154-2-406. Redaction of Certain Information.

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

R154-2-500. Search Requests and Reports.

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

R154-2-501. General Requirements.

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

(2) Active Records shall be retrievable by:

(a) the name of the debtor; or

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

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

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

(1) Search requests shall include the following:

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

(i) organization or individual surname;

(ii) first personal name; and

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

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

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

(d) Search logic.

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

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

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

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

A search request may include the following:

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

(a) include a particular debtor address;

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

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

(d) include a particular secured party name.

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

(3) Mode of delivery.

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

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

(4) Search request with filing.

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

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

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

R154-2-504. Search Methodology.

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

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

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

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

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

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

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

(A) the numerals 0 through 9; and

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

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

(i) All spaces are disregarded.

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

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

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

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

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

(II) "Smith" as the surname; and

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

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

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

(II) "Smith" as the surname; and

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

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

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

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

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

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

R154-2-506. Search Responses.

The response to a search request shall include the following:

(1) Copies.

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

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

(ii) the searcher requests a certified search.

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

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

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

(b) unique number that identifies the search report;

(c) date and time the report was generated;

(d) through date and time, meaning the date and time at, or prior to, which a UCC record must have been filed with the filing office in order for it to be reflected on the search;

(e) certification language consistent with current language;

(f) whether the scope includes both active and unlapsed records;

(g) search logic used;

(h) search logic disclaimer language;

(i) name searched, as provided by searcher;

(j) normalized name as provided by Subsection R154-2-504; and

(k) lien type searched, with the caveat that only those liens filed in the Utah Division of Corporations and Commercial Code that are statutorily permitted may be searched.

(3) Report. The search report shall contain the following:

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

(b) unique number assigned under this Subsection;

(c) identification of each initial financing statement, including:

(i) a listing of all related amendments;

(ii) information statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria (including whether the searcher has requested Active Records or only Unlapsed Records);

(iii) initial financing statement file number;

(iv) date and time the initial financing statement was filed;

(v) lapse date;

(vi) debtor name(s) appearing of record;

(vii) debtor address(es) appearing of record;

(viii) secured party name(s) appearing of record;

(ix) secured party address(es) appearing of record;

(x) indication of type of each amendment, if any;

(xi) date and time each amendment, if any, was filed;

(xii) amendment file number of each amendment, if any;

(xiii) date and time an information statement, if any, was filed; and

(xiv) date and time a filing officer statement, if any, was filed.

R154-2-600. Agricultural Liens.

Rules affecting agricultural liens are found at Utah Administrative Code Section R154-1.

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R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.
R156-55a-101. Title.

This rule shall be known as the "Utah Construction Trades Licensing Act Rule".

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in this rule:

(1) "Construction trades instructor", as used in Subsection 58-55-301(2)(p) is clarified to mean the education facility which is issued the license as a construction trades instructor. It does not mean individuals employed by the facility who may teach classes.

(2) "Construction trades instruction facility" means the facility which is granted the license as a construction trades instructor as specified in Subsection 58-55-301(2)(p) and as clarified in R156-55a-102(1).

(3) "Employee", as used in Subsections 58-55-102(12)(a) and 58-55-102(17), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the Division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(4) "Incidental", as used in Subsection 58-55-102(40), means work which:

(a) can be safely and competently performed by the specialty contractor; and

(b) arises from and is directly related to work performed in the licensed specialty classification and does not exceed 10 percent of the overall contract and does not include performance of any electrical or plumbing work unless specifically included in the specialty classification description under Subsection R156-55a-301(2).

(5) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(6) "Mechanical", as used in Subsections 58-55-102(21) and 58-55-102(32), means the work which may be performed by a S350 HVAC Contractor under Section R156-55a-301.

(7) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(8) "Qualifier", as used in Title 58, Chapter 55 and this rule, means the individual who demonstrates competence for a contractor or construction trades instruction facility license by passing the examinations, completing the experience requirements or holding the individual licenses that are prerequisite requirements to obtain the contractor or construction trades instruction facility license.

(9) "School" means a Utah school district, applied technology college, or accredited college.

(10) "Unprofessional conduct" defined in Title 58, Chapters 1 and 55, is further defined in accordance with Section 58-1-203 in Section R156-55a-501.

R156-55a-103. Authority.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55.

R156-55a-104. Organization - Relationship to Rule R156-1.

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

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is engaged in work which is included in the items listed in Subsections R156-55a-301(4) and (5) is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(22).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(21) and pursuant to Subsection 58-55-102(21)(b) is clarified as follows:

(a) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 15A-1-302(8) and constructed in accordance with Section 15A-1-304. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(32) and pursuant to Subsection 58-55-102(32) is clarified as follows:

(a) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than $50,000 in total cost.

R200 - Factory Built Housing Contractor. Disconnection, setup, installation or removal of manufactured housing on a

temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instruction Facility. A General Engineering Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(22).

I102 - General Building Trades Instruction Facility. A General Building Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsections 58-55-102(21) or 58-55-102(32).

I103 - Electrical Trades Instruction Facility. An Electrical Trades Instruction Facility is a construction trades instruction facility authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instruction Facility. A Plumbing Trades Instruction Facility is a construction trades instruction facility authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instruction Facility. A Mechanical Trades Instruction Facility is a construction trades instruction facility authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy. The General Electrical Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and replacement of photovoltaic cell panels and related components. Wiring, connections and wire methods as governed in the National Electrical Code and Subsection R156-55b-102(1) shall only be performed by an S200 General Electrical Contractor or S201 Residential Electrical Contractor. This classification is not required to install stand alone solar systems that do not tie into premises wiring or into the electrical utility, such as signage or street or parking lighting.

A contractor who obtained this classification of licensure between January 1, 2009 and April 25, 2011 and who holds an active license may, in addition to the above, perform the following activities as part of the scope of practice under this subsection: fabrication, construction, installation, and repair of photovoltaic cell panels and related components including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems. Work excluded from this classification includes work on any alternating current system or system component.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline. The General Plumbing Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto in a closed system not connected to the culinary water system. Notwithstanding the foregoing, where water delivery for the closed system is connected to the culinary water system and separated from the culinary water system by a backflow prevention device, a contractor licensed under this subsection may connect the closed system to the backflow prevention device, which must be installed by an actively licensed plumber.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work. This classification includes the above work for geo thermal systems.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Thermal Systems Contractor. Construction, repair and/or installation of solar thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and

maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry. Incidental work includes the installation of tub liners and wall systems.

S221 - Cabinet, Millwork and Countertop Installation Contractor. On-site construction and/or installation of milled wood products or countertops.

S222 - Overhead and Garage Door Contractor. The installation of overhead and garage doors and door openers.

S230 - Siding Contractor. Fabrication, construction, and/or installation of siding.

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of raingutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Gunnite and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementatious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementatious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall and Plastering Contractor. Fabrication, construction, and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall or plaster surfaces for suitable painting or finishing. Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster and other surfaces. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion. Incidental work includes the installation of roof clamp ring to the roof drain.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders. Incidental work includes the installation of shower pans.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile. Incidental work includes the installation of shower pans.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian, and corian type products. Incidental work includes the installation of shower pans.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor.

(a) grading and preparing land for architectural, horticultural, or decorative treatment;

(b) arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, or other decorative vegetation;

(c) construction of small decorative pools, tanks, fountains, hothouses, greenhouses, fences, walks, garden lighting of 50 volts or less, or sprinkler systems;

(d) construction of retaining walls except retaining walls

which are intended to hold vehicles, structures, equipment or other non natural fill materials within the area located within a 45 degree angle from the base of the retaining wall to the level of where the additional weight bearing vehicles, structures, equipment or other non natural fill materials are located; or

(e) patio areas except that:

(i) no decking designed to support humans or structures shall be included; and

(ii) no concrete work designed to support structures to be placed upon the patio shall be included.

(f) This classification does not include running electrical or gas lines to any appliance.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems. The HVAC Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S354 - Radon Mitigation Contractor. Layout, fabrication, and installation of a radon mitigation system. This classification does not include work on heat recovery ventilation or makeup air components which must be performed by an HVAC Contractor and does not include electrical wiring which must be performed by an Electrical Contractor.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed plumbing contractor. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, prefabricated pools, spas, and tubs.

S390 - Sewer and Waste Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto. Also included in painting on asphalt surfaces including striping, directional and other types of symbols or words.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of the system.

S420 - General Fencing, Ornamental Iron and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, handrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves, including the installation of venting and exhaust systems, provided the individual performing the installation is RMGA certified.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including underlayments, non-structural

subfloors and other incidental related work, but does not include the installation of sold wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing. Includes the installation and attachment of equipment such as poles, basketball standards or other equipment.

S510 - Elevator Contractor. Erecting, constructing, installing, altering, servicing, repairing or maintaining an elevator.

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope of the allowable contracting work to a specialized area of construction which the Division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the Division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the Division.

(3) The scope of practice for the following primary classifications includes the scope of practice stated in the descriptions for the following subsclassifications:

TABLE I

Primary Classification	Included subclassifications
S200	S201, S202
S210	S211, S212, S213, S214, S215, S216, S217
S220	S221, S222
S230	S231
S260	S261, S262, S263
S270	S272, S273
S290	S291, S292, S293, S294
S320	S321, S322, S323
S350	S351, S352, S353, S354
S420	S421
S440	S441
S490	S491

(4) The following activities are determined to not significantly impact the public health, safety and welfare and therefore do not require a contractors license:

(a) sandblasting;

(b) pumping services;

(c) tree stump or tree removal;

(d) installation within a building of communication cables including phone and cable television;

(e) installation of low voltage electrical as described in R156-55b-102(1);

(f) construction of utility sheds, gazebos or other similar items which are personal property and not attached;

(g) building and window washing, including power washing;

(h) central vacuum systems installation;

(i) concrete cutting;

(j) interior decorating;

(k) wall paper hanging;

(l) drapery and blind installation;

(m) welding on personal property which is not attached;

(n) chimney sweepers other than repairing masonry;

(o) carpet and vinyl floor installation;

(p) artificial turf installation;

(q) general cleanup of a construction site which does not include demolition or excavation; and

(r) work that would otherwise be limited to individuals holding the S260, S261, S262, S263, S290, S310, S330, S380, S420, S421 and S500 specialty classifications if the work is within the $1,000 or $3,000 labor and material limit as specified in the handyman exemption in Subsection 58-55-305(1)(h).

(5) The following activities are those determined to not significantly impact the public health, safety and welfare beyond the regulations by other agencies and therefore do not require a contractors license:

(a) lead removal regulated by the Department of Environmental Quality;

(b) asbestos removal regulated by the Department of Environmental Quality; and

(c) fire alarm installation regulated by the Fire Marshal.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), the qualifier for an applicant for licensure as a contractor or the qualifier for an applicant for licensure as a construction trades instruction facility shall pass the following examinations:

(a) the Utah Contractor Business - Law Examination; and

(b) an approved trade classification specific examination, where required in Subsection (2).

(2) An approved trade classification specific examination is required for the following contractor license classifications:

E100 - General Engineering Contractor

B100 - General Building Contractor

B200 - Modular Unit Installation Contractor

R100 - Residential and Small Commercial Contractor

R101 - Residential and Small Commercial Non Structural Remodeling and Repair Contractor

R200 - Factory Built Housing Contractor

I101 - General Engineering Trades Instruction Facility

I102 - General Building Trades Instruction Facility

I105 - Mechanical Trades Instruction Facility

S211 - Boiler Installation Contractor

S212 - Irrigation Sprinkling Contractor

S213 - Industrial Piping Contractor

S215 - Solar Thermal Systems Contractor

S216 - Residential Sewer Connection and Septic Tank Contractor

S220 - Carpentry Contractor

S222 - Overhead and Garage Door Contractor

S230 - Siding Contractor

S240 - Glass and Glazing Contractor

S250 - Insulation Contractor

S260 - General Concrete Contractor

S270 - General Drywall and Plastering Contractor

S280 - General Roofing Contractor

S290 - General Masonry Contractor

S293 - Marble, Tile and Ceramic Contractor

S300 - General Painting Contractor

S310 - Excavation and Grading Contractor

S320 - Steel Erection Contractor

S321 - Steel Reinforcing Contractor

S330 - Landscaping Contractor

S340 - Sheet Metal Contractor

S350 - HVAC Contractor

S351 - Refrigerated Air Conditioning Contractor

S353 - Warm Air Heating Contractor

S360 - Refrigeration Contractor

S370 - Fire Suppression Systems Contractor

S380 - Swimming Pool and Spa Contractor

S390 - Sewer and Waste Water Pipeline Contractor

S410 - Pipeline and Conduit Contractor

S440 - Sign Installation Contractor
S450 - Mechanical Insulation Contractor
S490 - Wood Flooring Contractor
S600 - General Stucco Contractor
(3) The passing score for each examination is 70%.
(4) Qualifications to sit for examination.
(a) An applicant applying to take any examination specified in this Section must sign an affidavit verifying that an applicant has completed the experience required under Subsection R156-55a-302b.
(5) "Approved trade classification specific examination" means a trade classification specific examination:
(a) given, currently or in the past, by the Division's contractor examination provider; or
(b) given by another state if the Division has determined the examination to be substantially equivalent.
(6) An applicant for licensure who fails an examination may retake the failed examination as follows:
(a) no sooner than 30 days following any failure up to three failures; and
(b) no sooner than six months following any failure thereafter.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:
(1) Requirements for all license classifications:
(a) Unless otherwise provided in this rule, two years of experience shall be lawfully performed within the 10-year period preceding the date of application under the general supervision of a contractor, and shall be subject to the following:
(i) If the experience was completed in Utah, it shall be:
(A) completed while a W-2 employee of a licensed contractor; or
(B) completed while working as an owner of a licensed contractor, which has for all periods of experience claimed, employed a qualifier who performed the duties and served in the capacities specified in Subsection 58-55-304(4) and in Subsection R156-55a-304.
(ii) If the experience was completed outside of the state of Utah, it shall be:
(A) completed in compliance with the laws of the jurisdiction in which the experience is completed; and
(B) completed with supervision that is substantially equivalent to the supervision that is required in Utah.
(iii) Experience may be determined to be substantially equivalent if lawfully obtained in a setting which has supervision of qualified persons and an equivalent scope of work, such as performing construction activities in the military where licensure is not required.
(b) One year of work experience means 2000 hours.
(c) No more than 2000 hours of experience during any 12 month period may be claimed.
(d) Except as described in Subsection (2)b, experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractors license.
(e) If the applicant's qualifying experience is outdated but has previously been approved in the state of Utah, a passing score on the trade examination and the laws and rules examination obtained within the one-year period preceding the date of application will requalify the applicant's experience.
(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:
(a) One of the required two years of experience shall be in a supervisory or managerial position.
(b) A person holding a four year bachelors degree or a two year associates degree in Construction Management may have one year of experience credited towards the supervisory or managerial experience requirement.
(c) A person holding a Utah professional engineer license may be credited with satisfying one year toward the supervisory or managerial experience required for E100 contractor license.
(3) Requirements for I101 General Engineering Trades Instruction Facility, I102 General Building Trades Instruction Facility, I103 Electrical Trades Instruction Facility, I104 Plumbing Trades Instruction Facility, I105 Mechanical Trades Instruction Facility license classifications:
An applicant for construction trades instruction facility license shall have the same experience that is required for the license classifications for the construction trade they will instruct.
(4) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of Subsection (1), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.
(5) Requirements for S354 Radon Mitigation Contractor. In addition to the requirements of Subsection (1), an applicant shall hold a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP). Experience completed prior to the effective date of this rule does not need to be performed under the supervision of a licensed contractor. Experience completed after the effective date of this rule must be performed under the supervision of a licensed contractor who has authority to practice radon mitigation.

R156-55a-302c. Qualifications for Licensure Requiring Licensure in a Prerequisite Classification.

(1) Beginning at the effective date of this rule, each new applicant as a qualifier for licensure as a I103 Electrical Trades Instruction Facility shall also be licensed as a master electrician or a residential master electrician.
(2) Beginning at the effective date of this rule, each new applicant as a qualifier for licensure as a I104 Plumbing Trades Instruction Facility shall also be licensed as a master plumber or a residential master plumber.

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.

In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of public liability insurance which provides coverage for the scope of work performed and in coverage amounts of at least $100,000 for each incident and $300,000 in total by means of a certificate of insurance naming the Division as a certificate holder.

R156-55a-302e. Additional Requirements for Construction Trades Instructor Classifications.

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:
(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.
(2) Any school that provides instruction to students by building houses for sale to the public is also required to be licensed in the appropriate instructor classification.
(a) Before being licensed in a construction trades instruction facility classification, the school shall submit the name of an individual person who acts as the qualifier in each of the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for

licensure as a construction trades instructor shall:

(i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a; and

(ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b(3).

(3) Each individual employed by a school licensed as a construction trades instruction facility and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades instruction facility classification as determined by the qualifier.

R156-55a-302f. Pre-licensure Education - Standards.

(1) Qualifier Education Requirement. The 20-hour pre-licensure education program required by Subsection 58-55-302(1)(e)(iii) shall be completed by the qualifier for a contractor applicant.

(2) Program Pre-Approval. A pre-licensure education provider shall submit an application for approval as a provider on the form provided by the Division. The applicant shall demonstrate compliance with Section R156-55a-302f.

(3) Eligible Providers. The following may be approved to provide pre-licensure education:

(a) a nationally or regionally recognized accredited college or university having a physical campus located within the State of Utah; or

(b) a non-profit Utah construction trades association involved in the construction trades in the State of Utah:

(i) representing multiple construction trade classifications;

(ii) with membership of:

(A) at least 250 contractors licensed in Utah; or

(B) less than 250 members, if the association is:

(I) competent, as determined by the Commission and the Director according to their sole discretion; and

(II) compliant with all other standards of this rule; and

(iii) having five years of experience providing education to contractors in Utah.

(4) Content. The 20-hour program shall include the following topics and hours of education relevant to the practice of the construction trades consistent with the laws and rules of this state:

(a) ten hours of financial responsibility instruction that includes the following:

(i) record keeping and financial statements;

(ii) payroll, including:

(A) payroll taxes;

(B) worker compensation insurance requirements;

(C) unemployment insurance requirements;

(D) professional employer organization (employee leasing) alternatives;

(E) prohibitions regarding paying employees on 1099 forms as independent contractors, unless licensed or exempted;

(F) employee benefits; and

(G) Fair Labor Standard Act;

(iii) cash flow;

(iv) insurance requirements including auto, liability, and health; and

(v) independent contractor licensure and exemption requirements;

(b) six hours of construction business practices that includes the following:

(i) estimating and bidding;

(ii) contracts;

(iii) project management;

(iv) subcontractors; and

(v) suppliers;

(c) two hours of regulatory requirements that includes the following:

(i) licensing laws;

(ii) Occupational Safety and Health Administration (OSHA);

(iii) Environmental Protection Agency (EPA); and

(iv) consumer protection laws; and

(d) two hours of mechanic lien fundamentals that include the State Construction Registry.

(5) Program Schedule.

(a) A pre-licensure education provider shall offer programs at least 12 times per year.

(b) The pre-licensure education provider is not obligated to provide a course if the provider determines the enrollment is not sufficient to reach breakeven on cost.

(6) Program Instruction Requirements: The pre-licensure education shall meet the following standards:

(a) Time. Each hour of pre-licensure education credit shall consist of 60 minutes of education in the form of live lectures or training sessions. Time allowed for lunches or breaks may not be counted as part of the education time for which education credit is issued.

(b) Learning Objectives. The learning objectives of the pre-licensure education shall be reasonably and clearly stated.

(c) Teaching Methods. The pre-licensure education shall be presented in a competent and well organized manner consistent with the stated purpose and objective of the program. The student must demonstrate knowledge of the course material and must be given a pass/fail grade.

(d) Faculty. The pre-licensure education shall be prepared and presented by individuals who are qualified by education, training or experience.

(e) Distance Learning. Distance learning, internet courses, and home study courses are not allowed to meet pre-licensure education requirements.

(f) Registration and Attendance. The provider shall have a competent method of registration and verification of attendance of individuals who complete the pre-licensure education.

(g) Education Curriculum and Study/Resource Guide. The provider shall be responsible to provide or develop pre-licensure education curriculum and study/resource guide for the pre-licensure education that must be pre-approved by the Commission and the Division prior to use by the provider.

(h) Live Broadcast. The pre-licensure education course may be taught by live broadcast if:

(i) the student and the instructor are able to see and hear each other; and

(ii) a representative of the provider is at any remote location to monitor registration and attendance at the course.

(7) Certificates of Completion. The pre-licensure education provider shall provide individuals completing the pre-licensure education a certificate that contains the following information:

(a) the date of the pre-licensure education;

(b) the name of the pre-licensure education provider;

(c) the attendee's name;

(d) verification of completion of the 20-hour requirement; and

(e) the signature of the pre-licensure education provider.

(8) Reporting of Program Completion. A pre-licensure education provider shall, within seven calendar days, submit directly to the Division verification of attendance and completion on behalf of persons attending and completing the program. This verification shall be submitted on forms provided by the Division.

(9) Program Monitoring. On a random basis, the Division or Commission may assign monitors at no charge to attend a pre-licensure education course for the purpose of evaluating the education and the instructor(s).

(10) Documentation Retention. Each provider shall for a period of four years maintain adequate documentation as proof of compliance with this section and shall, upon request, make such documentation available for review by the Division or the Commission. Documentation shall include:

(a) the dates of all pre-licensure education courses that have been completed;

(b) registration and attendance logs of individuals who completed the pre-licensure education;

(c) the name of instructors for each education course provided as a part of the program; and

(d) pre-licensure education handouts and materials.

(11) Disciplinary Proceedings. As provided in Section 58-1-401 and Subsection 58-55-302(1)(e)(iii), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any pre-licensure education provider, if the pre-licensure education provider fails to meet any of the requirements of this section or the provider has engaged in other unlawful or unprofessional conduct.

(12) Exemptions. In accordance with Subsection 58-55-302(1)(e)(iii), the following persons are not required to complete the pre-licensure education program requirements:

(a) a person holding a four-year bachelor degree or a two-year associate degree in Construction Management from an accredited program;

(b) a person holding an active and unrestricted Utah professional engineer license who is applying for the E100 contractor license classification; or

(c) a person who:

(i) is a qualifier on an active and unrestricted contractor license;

(ii) became the qualifier on the license on or before October 9, 2014; and

(iii) is applying to:

(A) add additional contractor classifications to the license; or

(B) become a qualifier on a new entity that is applying for initial licensure.

R156-55a-303a. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a(1).

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

(3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director or supervising individual, as designated by the licensee, shall comply with the continuing education requirements set forth in Section R156-55a-303b.

R156-55a-303b. Continuing Education - Standards.

(1) Required Hours. Pursuant to Subsection 58-55-302.5, each licensee shall complete a total of six hours of continuing education during each two year license term. A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours. A minimum of three hours shall consist of live in-class attendance. The remaining three hours may consist of courses provided through distance learning.

(a) "Core continuing education" is defined as construction codes, construction laws, job site safety, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices, finance and bookkeeping.

(b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal and business motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

(d) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) Provider. The course provider shall be among those specified in Subsection 58-55-302.5(2).

(c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course that is provided through Internet or home study may be recognized for continuing education if the course verifies registration and participation in the course by means of a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant. A home study course shall include no fewer than five variations of the final examination, distributed randomly to participants. Home study courses, including the five exam variations, shall be submitted in their entirety to the Division for review. Providers shall track the following:

(i) the amount of time each student has spent in the course;

(ii) what activities the student did or did not access; and

(iii) all of the student's test scores.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate that contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit and type of credit (core or professional);

(vi) the attendee's name; and

(v) the signature of the course provider.

(3) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(4) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (8). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(5) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(6) The continuing education requirement for electricians, plumbers and elevator mechanics as established in Subsections 58-55-302.7, if offered by a provider specified in Subsection 58-55-302.5(2), shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-302.5 and implemented herein. The contractor licensee shall assure that the course provider has submitted the verification of the electrician's, plumber's or elevator mechanic's attendance on behalf of the licensee to the continuing education registry as specified in Subsection (8).

(7) A course provider shall submit continuing education courses to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(8) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this Section.

(9) As provided in Section 58-1-401 and Subsections 58-55-302.5(2) and 58-55-302.7(4)(a), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any course or provider, if the course or provider fails to meet any of the requirements of this section or the provider has engaged in unlawful or unprofessional conduct.

(10) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs that meet the standards set forth under this Section;

(ii) publish on their website listings of continuing education programs that have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. A continuing education registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55a-304. Contractor License Qualifiers.

(1) The capacity and material authority specified in Subsection 58-55-304(4) is clarified as follows:

(a) Except as allowed in Subsection (b), the qualifier must receive remuneration for work performed for the contractor licensee for not less than 10 hours of work per week;.

(i) If the qualifier is an owner of the business, the remuneration may be in the form of owner's profit distributions or dividends with a minimum ownership of 20 percent of the contractor licensee.

(ii) If the qualifier is an officer or manager of the contractor licensee, the remuneration must be in the form of W-2 wages.

(b) The 10 hour minimum in Subsection (a) may be reduced if the total of all hours worked by all owners and employees is less than 50 hours per week, in which case the minimum may not be less than 20 percent of the total hours of work performed by all owners and employees of the contractor.

(2) Construction Trades Instruction Facility Qualifier. In accordance with Subsection 58-55-302(1)(f), the contractor license qualifier requirements in Section 58-55-304 shall also apply to construction trades instruction facilities.

R156-55a-305. Compliance Agency Reporting of Sole Owner Building Permits Issued.

In accordance with Subsection 58-55-305(2), all compliance agencies that issue building permits to sole owners of property must submit information concerning each building permit issued in their jurisdiction within 30 days of the issuance, with the building permit number, date issued, name, address and phone number of the issuing compliance agency, sole owner's full name, home address, phone number, and subdivision and lot number of the building site, to a fax number, email address or written mailing address designated by the Division.

R156-55a-305a. Exempt Contractors Filing Affirmation of Liability and Workers Compensation Insurance.

(1) Initial affirmation. In accordance with Subsection 58-55-305(1)(h)(ii)(F), any person claiming exemption under Subsection 58-55-305(1)(h) for projects with a value greater than $1,000 but less than $3,000 shall file a registration of exemption with the Division which includes:

(a) the identity and address of the person claiming the exemption; and

(b) a statement signed by the registrant verifying:

(i) that the person has public liability insurance in force which includes the Division being named as a certificate holder, the policy number, the expiration date of the policy, the insurance company name and contact information, and coverage amounts of at least $100,000 for each incident and $300,000 in total; and

(ii) that the person has workers compensation insurance in force which names the Division as a certificate holder, includes the policy number, the expiration date of the policy, the insurance company name and contact information; or

(iii) that the person does not hire employees and is therefore exempt from the requirement to have workers compensation insurance.

(2) Periodic reaffirmations required. The affirmation required under Subsection (1) shall be reaffirmed on or before November 30 of each odd numbered year.

R156-55a-306. Contractor Financial Responsibility - Division Audit.

In accordance with Subsections 58-55-302(10)(c), 58-55-306(5), 58-55-306(4)(b), and 58-55-102(19), the Division may consider various relevant factors in conducting a financial responsibility audit of an applicant, licensee, or any owner, including:

(1)(a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of each of the above actions;

(b) financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;

(c) an acceptable current credit report that meets the following requirements:

(i) for individuals:

(A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or

(B) a merged credit report of the agencies identified in Subsection (A) prepared by the National Association of Credit Managers (NACM); or

(ii) for entities, a business credit report such as an Experian Business Credit Report or a Dun and Bradstreet Report;

(d) an explanation of the reasons for any financial difficulties and how the financial difficulties were resolved;

(e) any of the factors listed in Subsection R156-1-302 that may relate to failure to maintain financial responsibility;

(f) each of the factors listed in this Subsection regarding the financial history of the owners of the applicant or licensee;

(g) any guaranty agreements provided for the applicant or licensee and any owners; and

(h) any history of prior entities owned or operated by the applicant, the licensee, or any owner that have failed to maintain financial responsibility.

R156-55a-308a. Operating Standards for Schools or Colleges Licensed as Contractors.

(1) Each school licensed as a B100 General Building Contractor or a R100 Residential and Small Commercial Contractor or both shall obtain all required building permits for homes built for resale to the public as part of an educational training program.

(2) Each employee that works as a teacher for a school licensed as a construction trades instruction facility shall:

(a) have on their person a school photo ID card with the trade they are authorized to teach printed on the card; and

(b) if instructing in the plumbing or electrical trades, they shall also carry on their person their Utah journeyman or residential journeyman plumber license or Utah journeyman, residential journeyman, master, or residential master electrician license.

(3) Each school licensed as a construction trades instruction facility shall not allow any teacher or student to work on any portion of the project subcontracted to a licensed contractor unless the teacher or student are lawful employees of the subcontractor.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modifications, maintenance, cleaning, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

(2) An approved training program shall include the following course content:

(a) general gas appliance installation codes;

(b) venting requirements;

(c) combustion air requirements;

(d) gas line sizing codes;

(e) gas line approved materials requirements;

(f) gas line installation codes; and

(g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

(a) Federal Bureau of Apprenticeship Training;

(b) Utah college apprenticeship program; and

(c) Trade union apprenticeship program.

(4) In accordance with Subsection 58-55-308(3), the approved programs set forth in paragraphs (2)(b) and (2)(c) herein shall require program participants to pass the Rocky Mountain Gas Association Gas Appliance Installers Certification Exam or approved equivalent exams established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(3), a person who has not completed an approved training program, but has passed the Rocky Mountain Gas Association Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

(6) Content of certificates of completion. An approved program shall issue a certificate, including a wallet certificate, to persons who successfully complete their training program containing the following information:

(a) name of the program provider;

(b) name of the approved program;

(c) name of the certificate holder;

(d) the date the certification was completed; and

(e) signature of an authorized representative of the program provider.

(7) Documentation of exemption from certification. The following shall constitute documentation of exemption from certification:

(a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;

(b) current Utah licensed Journeyman or Residential Journeyman plumber license; or

(c) certification from the Rocky Mountain Gas Association or approved equivalent exam which shall include the following:

(i) name of the association, school, union, or other organization who administered the exam;

(ii) name of the person who passed the exam;

(iii) name of the exam;

(iv) the date the exam was passed; and

(v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

R156-55a-309. Reinstatement Application Fee.

The application fee for a contractor applicant who is applying for reinstatement more than two years after the expiration of licensure, who has been engaged in unauthorized practice of contracting following the expiration of the applicant's license, shall be the current license application fee normally required for a new application rather than the reinstatement fee provided under R156-1-308g(3)(d).

R156-55a-311. Reorganization - Conversion of Contractor Business Entity.

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a

new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

Exception: A conversion from one form of entity to another form where "Articles of Conversion" are filed with the Utah Division of Corporations and Commercial Code shall not require a new contractor application.

R156-55a-312. Inactive License.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee will not engage in the construction trade(s) for which his license was issued while his license is on inactive status except to identify himself as an inactive licensee.

(2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b).

(3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:

(a) documentation that the licensee meets the requirements of Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b); and

(b) documentation that the licensee has taken and passed the business and law examination and the trade examination for the classification for which activation is sought except that the following exceptions shall apply to the reactivation examination requirement:

(i) No license shall be in an inactive status for more than six years.

(ii) Prior to a license being activated, a licensee shall meet the requirements of renewal.

R156-55a-401. Minimum Penalty for Failure to Maintain Insurance.

(1) A minimum penalty is hereby established for the violation of Subsection R156-55a-501(2) as follows:

(a) For a violation the duration of which is less than 90 days, where the licensee at the time a penalty is imposed documents that the required liability and workers compensation insurance have been reacquired, and provided an insurable loss has not occurred while not insured, a minimum of a 30 day suspension of licensure, stayed indefinitely, automatically executable in addition to any other sanction imposed, upon any subsequent violations of Subsection R156-55a-501(2).

(b) For a violation the duration of which is 90 days or longer, or where insurable loss has occurred, where the licensee at the time a penalty is imposed documents that the required insurance have been reacquired, a minimum of 30 days suspension of licensure.

(c) For a violation of any duration, where the licensee at the time a penalty is imposed fails to document that the required insurance have been reacquired, a minimum of indefinite suspension. A license which is placed on indefinite suspension may not be reinstated any earlier than 30 days after the licensee documents the required insurance have been reacquired.

(d) If insurable loss has occurred and licensee has not paid the damages, the license may be suspended indefinitely until such loss is paid by the licensee.

(e) Nothing in this section shall be construed to restrict a presiding officer from imposing more than the minimum penalty for a violation of Subsection R156-55a-501(2) and (3). However, absent extraordinary cause, the presiding officer may not impose less than the minimum penalty.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the Division with respect to any matter for which notification is required under this rule or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the Division and the Commission as grounds for immediate suspension of the contractors license;

(2) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2) and Section R156-55a-302d; and

(3) failing to within 30 days of a request from the Division to provide:

(a) proof of insurance coverage;

(b) a copy of the licensee's public insurance policy; or

(c) any exclusions included in the licensee's public insurance policy.

R156-55a-502. Penalty for Unlawful Conduct.

The penalty for violating Subsection 58-55-501(1) while suspended from licensure shall include the maximum fine allowed by Subsection 58-55-503(4)(i).

R156-55a-503. Administrative Penalties.

(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

TABLE II

FINE SCHEDULE

Violation	All Licenses Except Electrical or Plumbing	Electrical or Plumbing
FIRST OFFENSE		
58-55-308(2)	$ 500.00	N/A
58-55-501(1)	$ 500.00	$ 500.00
58-55-501(2)	$ 500.00	$ 800.00
58-55-501(3)	$ 800.00	$1,000.00
58-55-501(9)	$ 500.00	$ 500.00
58-55-501(10)	$ 800.00	$1,000.00
58-55-501(12)	N/A	$ 500.00
58-55-501(14)	$ 500.00	N/A
58-55-501(19)	$ 500.00	N/A
58-55-501(21)	$ 500.00	$ 500.00
58-55-501(22)	$ 500.00	N/A
58-55-501(23)	$ 500.00	N/A
58-55-501(24)	$ 500.00	N/A
58-55-501(25)	$ 500.00	N/A
58-55-501(26)	$ 500.00	N/A
58-55-501(27)	$ 500.00	N/A
58-55-501(28)	$ 500.00	N/A
58-55-501(29)	$ 500.00	N/A
58-55-504(2)	$ 500.00	N/A
SECOND OFFENSE		
58-55-308(2)	$1,000.00	N/A
58-55-501(1)	$1,000.00	$1,500.00
58-55-501(2)	$1,000.00	$1,500.00
58-55-501(3)	$1,600.00	$2,000.00
58-55-501(9)	$1,000.00	$1,000.00
58-55-501(10)	$1,600.00	$2,000.00
58-55-501(12)	N/A	$1,000.00
58-55-501(14)	$1,000.00	N/A
58-55-501(19)	$1,000.00	N/A
58-55-501(21)	$1,000.00	$1,000.00
58-55-501(22)	$1,000.00	N/A
58-55-501(23)	$1,000.00	N/A
58-55-501(24)	$1,000.00	N/A
58-55-501(25)	$1,000.00	N/A
58-55-501(26)	$1,000.00	N/A
58-55-501(27)	$1,000.00	N/A
58-55-501(28)	$1,000.00	N/A
58-55-501(29)	$1,000.00	N/A
58-55-504(2)	$1,000.00	N/A
THIRD OFFENSE		
Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).		

(2) Citations shall not be issued for third offenses, except

in extraordinary circumstances approved by the investigative supervisor.

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

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

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

R156-55a-504. Crane Operator Certifications.

In accordance with Subsection 58-55-504(2)(a) one of the following certifications is required to operate a crane on commercial construction projects:

(1) a certification issued by the National Commission for the Certification of Crane Operators;

(2) a certification issued by the Operating Engineers Certification Program formerly known as the Southern California Crane and Hoisting Certification Program; or

(3) a certification issued by the Crane Institute of America.

R156-55a-602. Contractor License Bonds.

Pursuant to the provisions of Subsections 58-55-306(1)(b) and 58-55-306(5)(b)(iii), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount, form, and coverage as follows:

(1) An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.

(2) The coverage of the license bond shall include losses that may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55 and rules R156-1 and R156-55a including the failure to maintain financial responsibility, the failure of the licensee to pay its obligations, and the failure of the owners or a licensed unincorporated entity to pay income taxes or self employment taxes on the gross distributions from the unincorporated entity to its owners.

(3) The financial history of the applicant, licensee, or any owner, as outlined in Section R156-55a-306, may be reviewed in determining the bond amount required under this section.

(4) If the licensee is submitting a bond under Subsection 58-55-306(5)(b)(iii)(B), the amount of the bond shall be 20% of the annual gross distributions from the unincorporated entity to its owners. As provided in Subsection 58-55-302(10)(c), the Division, in determining if financial responsibility has been demonstrated, may consider the total number of owners, including new owners added as reported under the provisions of Subsection 58-55-302(10)(a)(i), in setting the amount of the bond required under this subsection.

(5) If the licensee is submitting a bond under any subsection other than Subsection 58-55-306(5)(b)(iii)(B), the minimum amount of the bond shall be $50,000 for the E100 or B100 classification of licensure; $25,000 for the R100 classification of licensure; or $15,000 for other classifications. A higher amount may be determined by the Division and the Commission as provided in Subsection R156-55a-602(6).

(6) The amount of the bond specified under Subsection R156-55a-602(5) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is insufficient to reasonably cover risks to the public health, safety and welfare. The financial history of the applicant, licensee or any owner, as outlined in Section R156-55a-306 may be reviewed in determining the bond amount required.

(7) A contractor may provide a license bond issued by a surety acceptable to the Division in an amount less than the bond amount specified in Subsection R156-55a-602(5) if:

(a) the contractor demonstrates by clear and convincing evidence that:

(i) the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is in excess of what is reasonably necessary to cover risks to the public health, safety and welfare;

(ii) the contractor's lack of financial responsibility is due to extraordinary circumstances that the contractor could not control as opposed to general financial challenges that all contractors experience; and

(iii) the contractor's scope of practice will be restricted commensurate with the degree of risk the contract presents to the public health, safety, and welfare; and

(b) the Commission and Division approve the amount.

KEY: contractors, occupational licensing, licensing

April 21, 2016	**58-1-106(1)(a)**
Notice of Continuation October 4, 2011	**58-1-202(1)(a)**
	58-55-101
	58-55-308(1)(a)
	58-55-102(39)(a)

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 prelicensing education or continuing education; or

(b) function as an instructor for courses approved for prelicensing 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:

(a) a person who is the original seller of an undivided fractionalized long-term estate.

(b) sponsor includes, if the seller is an entity, any individual who exercises managerial responsibility in the sponsoring entity.

(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;

(iv) 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.

A person who sells or offers to sell an undivided fractionalized long-term estate shall disclose to each prospective purchaser certain information related to the real property in which the undivided fractionalized long-term estate is offered, as described in this rule. A real estate licensee who markets an undivided fractionalized long-term estate shall obtain from the sponsor or seller and provide to each prospective purchaser the required information related to the real property in which the undivided fractionalized long-term estate is offered. The information required to be disclosed hereunder shall be in written or documented form, which shall be provided to the purchaser prior to purchasing, and shall include the following:

(1) for all undivided fractionalized long-term estates:

(a) a brief account describing the professional qualifications, background, and experience of the sponsor;

(b) any material information that relates to a current lease or sublease that affects the real property in which the undivided fractionalized long-term estate is offered;

(c) the tenant in common agreement or other agreement that forms the substance of the undivided fractionalized long-term estate and includes a definition of the undivided fractionalized interest;

(d) description of any improvements to the real property in which the undivided fractionalized long-term estate is offered;

(e) any defects in the property known by the sponsor that may materially affect the value of the property;

(f) material information known by the sponsor concerning any environmental issues affecting the real property; and,

(g) a preliminary title report on the real property;

(2) in addition to the disclosures required by subsection (1), if the undivided fractionalized long-term estate includes:

(a) management of the real property by the sponsor or an affiliate of the sponsor in accordance with UCA Section 61-1-13(1)(ee)(ii)(C)(II) and (III), the information required to be disclosed shall include:

(i) the sponsor's continuing interest, if any, in the real property;

(ii) any bankruptcies or civil lawsuits involving the sponsor and each affiliate of the sponsor;

(iii) whether any affiliate of the sponsor is or is expected to become a third-party service provider to the real property;

(iv) any relationship between the property managers and the sponsor; and,

(v) any property management agreements that would continue after the sale;

(b) multiple tenants, the information required to be disclosed shall include:

(i) any rent rolls and payment history for the property which the sponsor has in their possession, custody, or control; and

(ii) any tenant financial records the sponsor has in their possession, custody, or control;

(c) debt on the real property, the information required to be disclosed shall include:

(i) each of the loan documents; and

(ii) a current loan statement;

(d) a master lease agreement, the information required to be disclosed shall include:

(i) the master lease agreement;

(ii) disclosure of the sponsor's relationship with the master tenant, if any;

(iii) if the master lease tenant is an affiliate of the sponsor, or the sponsor participated in establishing the master lease:

(A) audited financial statements of the master lease tenant; and

(B) all bankruptcies or civil lawsuits involving the sponsor, an affiliate of the sponsor, or the master lease tenant.

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 inititials), 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
May 31, 2016 **61-2f-103(1)**
Notice of Continuation August 12, 2015 **61-2f-105**
61-2f-203(1)(e)
61-2f-206(3)
61-2f-206(4)(a)
61-2f-306
61-2f-307

R174. Communications Authority Board (Utah), Administration.
R174-1. Utah 911 Advisory Committee.
R174-1-1. Purpose.

The purpose of this rule is to outline the operation of the committee and procedures whereby the committee shall award funds to Public Safety Answering Points (PSAPs) and Dispatch Centers throughout the State of Utah for the establishment and maintenance of a statewide unified E-911 emergency system, and to establish the framework to provide grants from the Computer Aided Dispatch (CAD) Restricted Account.

R174-1-2. Authority.

This rule is authorized by Section 63H-7a-302(5), and Section 63H-7a-204(11).

R174-1-3. Definitions.

(1) Definitions used in the rule are defined in Section 69-2-2.

(2) In addition:

(a) "applicant" means a Public Safety Answering Point (PSAP) submitting a grant application;

(b) "Authority" means the Utah Communications Authority established in Section 67H-7a-201;

(c) "Board" means the Utah Communications Authority Board established in Section 67H-7a-203;

(d) "CAD2CAD Interface" means a component to share CAD data between disparate CAD systems on a statewide or regional basis;

(e) "committee" means the 911 Advisory Committee established in Section 63H-7a-307.

(f) "grant" means an appropriation of funds from the restricted Unified Statewide Emergency Service Account created in Section 63H-7a-304 or the Computer Aided Dispatch Restricted Account created in Section 63H-7a-303;

(g) "PSAP" means a public safety answering point as defined in Section 69-2-2(7).

(h) "Program" means the defined activities funded by the Unified Statewide 911 Emergency Service Account in Section 63H-7a-304(2) or the defined activities funded by the Computer Aided Dispatch Restricted Account in Section 63H-7a-303(2); and

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

R174-1-4. Operation of the Committee.

(1)(a) A chairperson shall be elected as provided in Section 63H-7a-307(3)(a) at the first meeting of each calendar year.

(b) The committee shall also elect a vice-chairperson at that time to assist the chairperson with administrative duties.

(2)(a) The committee shall meet monthly unless circumstances otherwise dictate.

(b) Members of the committee may participate in the meeting by electronic means such as internet connection or a phone bridge.

R174-1-5. Grant Process.

(1)(a) A PSAP seeking a grant from the Unified Statewide 911 Emergency Service Account or the Computer Aided Dispatch Restricted Account shall make application to the committee using the Utah 911 Committee Grant Application forms.

(b) The application must include:

(i) a description of all equipment or services that may be purchased with the grant;

(ii) a list of vendors and contractors who may be used to provide equipment or services;

(iii) evidence that the PSAP has used a competitive process when procuring equipment or services;

(iv) a complete narrative justifying the need for the grant;

(v) if applying for a grant from the Computer Aided Dispatch Restricted Account, a description of how the project fulfills the purposes outlined in 63H-7a-303;

(vi) a description of any other funding sources that may be used to pay for the acquisition of equipment, construction of facilities or services;

(vii) additional information as requested by the committee; and

(viii) the signature of the authorized agency official.

(2)(a) Any PSAP intending to apply for a grant shall submit a notice of intent to Agency staff prior to the beginning of the calendar year for consideration in the next budget cycle.

(b) PSAPs that submit a notice of intent may receive priority over PSAPs that do not submit a notice of intent prior to making a grant application.

(3)(a) The committee requires a 30-day review period to consider grant application submissions.

(i) In cases of extenuating circumstances, a PSAP may request that the committee shorten the 30-day review period and consider the application at its next regularly scheduled meeting.

(ii) The request for a shorter review period shall be made in writing, and explain the extenuating circumstances that justify the expedited consideration of the grant application.

(b) Following the 30-day review period, a representative from the PSAP making the application shall be present, in person or by electronic means, at the next regularly scheduled committee meeting to present the grant application.

(4) PSAPs in the third through sixth class counties may apply for grants that enhance 911 emergency services. The committee shall consider these applications on a case-by-case basis.

R174-1-6. Criteria for Determining Grant Eligibility.

(1) In order to be eligible for a grant, a PSAP shall comply with all of the requirements found in Title 63H Chapter 7a Part 3; Title 53, Chapter 10, Part 6; and Title 69, Chapter 2.

(2)(a) When determining which PSAPS may receive grants, the committee shall give priority to 911 projects that:

(b) enhance public safety by providing a statewide, unified911 emergency system;

(c) include a maintenance package that extends the life of the 911 system;

(d) increase the value of the 911 system by ensuring compatibility with emerging technology;

(e) replace equipment which is no longer reliable or functioning; and

(f) include a local share of funding according to the following formula:

(i) PSAPs in a county of the first class that pay at least 30% of the total cost of the project;

(ii) PSAPs in a county of the second class that pay at least 20% of the total cost of the project; and

(iii) PSAPs in a county of the third through sixth class that pay up to 10% of the total cost of the project.

(3) Eligible CAD functional elements - Refer to Section R174-1-8, Attachment A -- Eligible CAD Functional Elements.

(a) In the case of an award from the Computer Aided Dispatch Restricted Account, PSAPs shall pay a grant match of 20% regardless of class.

(4) If a grant application includes equipment that utilizes geographical information systems or geo-positioning systems, the PSAP shall consult with the State Automated Geographic Reference Center (AGRC) in the Division of Integrated Technology of the Department of Technology Services.

(5) When economically feasible and advantageous to the individual PSAPs, the committee may negotiate with vendors on behalf of the PSAPs as a group.

(6) Where applicable, PSAPs shall provide evidence from

the Bureau of Emergency Medical Services (BEMS) that they are a Designated Emergency Medical Dispatch Center.

R174-1-7. Awarding a Grant.

(1) The recommendation to award a grant shall be made by a majority vote of the committee.

(2) The committee may only recommend grants for the purchase of equipment or the delivery of services in an amount which is equal to, or less than, the amount that would be paid to a State vendor or contractor.

(3)(a) All grant awards shall be memorialized in a contract between the Authority and the grant recipient.

(b) Each contract shall include the following conditions:

(i) the state or local entity shall agree to participate in the statewide 911 data management system sponsored by the committee;

(ii) the grant may be used only for the purposes specified in the application; and

(iii) the grant shall be de-obligated if the state or local entity breaches the terms of the contract.

(4)(a) Unspent grant funds shall be automatically de-obligated within one year from the approval of the original grant.

(b) A PSAP may request a time extension to spend grant funds in extenuating circumstances.

(i) The request shall be made in writing and explain the extenuating circumstances that justify additional time to spend the grant funds.

(ii) The committee shall recommend the approval or denial of the request by a majority vote.

R174-1-8. Attachment A -- Eligible CAD Functional Elements.

(i) Hardware: Servers and other hardware are eligible for full reimbursement when the equipment is required to support the core CAD functionality. New CAD required hardware that also supports associated functions such as Records Management Systems is eligible for reimbursement at the apportioned rate of documented use.

(ii) Software: CAD software fulfilling the core missions of call entry, address verification, unit recommendation, dispatching and tracking of units, and mapping. Eligible items include:

(a) Core System to support CAD (apportioned to actual cost of modules to support CAD)

(b) CAD application

(c) Geo-base address verification

(d) Mapping

(e) Automatic Vehicle Location

(f) Unit Recommendations or Response Plans

(g) E911 copy-over

(h) Interfaces to closely related 3rd party applications (medical/fire/police card system, fire department paging system, or UCJIS)

(i) Premise (apportioned at 50%)

(iii) Professional Services: (installation, configuration, etc.) apportioned for eligible items.

(iv) Maintenance: Ineligible other than CAD2CAD interface.

(v) Database Merging/Conversion: Eligible for CAD data merging/conversion, apportioned at 50% if RMS data is also included in the merge/conversion.

(vi) Ineligible software items include, but are not limited to:

(a) RMS related modules

(b) System dashboards or monitoring

(c) Aerial photography

(d) Equipment tracking

(e) Personnel tracking

(f) Imaging

(g) Pin-mapping or statistics packages

KEY: Utah Communications Authority, Utah 911 Advisory Committee

September 29, 2015 63H-7a-303

Notice of Continuation May 2, 2016 63H-7a-304

R251. Corrections, Administration.
R251-109. Sex Offender Treatment Providers.
R251-109-1. Authority and Purpose.

(1) This rule is authorized by Sections 63G-3-201, 64-13-10, 64-13-25, and 76-5-406.5, of the Utah Code.

(2) The purpose of the rule is to define the criteria and guidelines for the minimum standards, application and approval process, and program requirements for sex offender treatment providers.

R251-109-2. Definitions.

(1) "Approved provider status" means status as a provider for sex offender services through the Utah Department of Corrections.

(2) "Affiliate approval" means approval of a professional who does not meet experience requirements and is seeking to become approved as a provider.

(3) "Direct clinical experience" means face-to-face contact with patients/clients, direct supervision, training, case coordination and research.

(4) "Program" is the specific services as listed in the R251-109-6, pertaining to the program requirements each clinician is providing to UDC clientele with a sex offense charge.

(5) "Formal training" means education and/or supervised experience in the required field; may be provided at an accredited college or university or at seminars or conferences.

(6) "Disclosure" means the discussion during treatment of previous adjudicated and unadjudicated sexual offenses.

(7) "Provider" means a therapist who has been approved by the Department to provide services to sex offenders under the jurisdiction of the Utah Department of Corrections.

(8) "Provider supervision" means one hour of supervision for every 40 hours of direct client contact with a minimum of one hour supervision per month.

(9) "Screening committee" means group of Department of Corrections employees assigned to screen and approve applications from providers to provide sex offender treatment.

(10) "Transition program" means program designed to help offenders move from residential to non-residential treatment; also to help them move from intensive to progressively less intensive treatment.

(11) "UDC" means Utah Department of Corrections.

R251-109-3. Provider Standards and Requirements.

It is the policy of the Department that:

(1) all potential providers of sex offender treatment shall be screened by the screening committee to ensure they meet the specific established standards and qualifications for providers of sex offender treatment, as found in R251-109-6;

(2) providers, shall require disclosure of all criminal sexual behavior by the offender as a basic requirement for successful completion of therapy;

(3) approved providers must reapply to UDC every two years to renew their approved provider status;

(4) providers shall have a current Utah license to practice therapy in a mental health profession, as listed in the Mental Health Practice Act,58-60-102 which shall include:

(a) psychiatry;

(b) psychology;

(c) social work; mental health counselor or

(d) marriage and family therapy;

(5) providers' education shall include:

(a) a master's or doctorate degree from a fully accredited college or university in:

(i) social work; mental health counseling

(ii) psychology; or

(b) a medical doctor if board certified/eligible psychiatrist; or

(c) a doctor of osteopathy if board certified/eligible psychiatrist;

(6) within two years immediately preceding application for approval, the provider shall have at least 1,000 hours of direct clinical experience in sex offender treatment, which includes:

(a) at least 180 hours of sex offender evaluation experience; and

(b) at least 1,000 hours of sex offender treatment experience;

(7) within two years immediately preceding application, the provider shall have received at least 20 hours of sex offender specific formal training, 26 total hours of professional training;

(8) licensed professionals and professionals in graduate training and/or post graduate residency who do not meet the experience and training requirements may apply to UDC for affiliate approval;

(9) affiliate approval shall require that the applicant arrange for ongoing provider supervision of therapy by an approved provider;

(10) affiliates may provide services as part of a degree program leading to licensure;

(11) required training may be obtained through:

(a) documented conferences;

(b) symposia;

(c) seminars; or

(d) other course work;

(12) the training shall be directly related to the treatment and evaluation of sex offenders;

(13) the training may include:

(a) behavioral/cognitive methods;

(b) reconditioning and relapse prevention;

(c) use of plethysmograph examinations;

(d) use of polygraph examinations;

(e) group therapy;

(f) individual therapy;

(g) sexual dysfunction;

(h) victimology;

(i) couples and family therapy;

(j) risk assessment;

(k) sexual addiction;

(l) sexual deviancy; and

(m) ethics and professional standards;

(14) prior to and during approval, all providers must agree to abide by reporting and other requirements established by UDC and the laws and statutes of the state of Utah;

(15) reporting requirements shall include the offender's:

(a) progress in therapy;

(b) prognosis; and

(c) risk to the community; and

(16) failure to comply with reporting requirements may result in a provider being removed from the approved list.

R251-109-4. Application Process.

(1) All individuals providing services are required to be approved.

(2) Each applicant shall provide all of the required documentation to UDC at the time of submission. If not, the packet shall be returned to the provider.

(3) Individuals or affiliates who are supervised by an approved individual or agency may begin providing services pending approval once UDC receives their application packet.

(4) Reapplication shall include:

(a) documentation demonstrating continuing education and training in sex offender specific treatment of not less than twenty hours every two years;

(b) current licensure with the state of Utah;

(c) hours of therapy/supervision per year provided; and

(d) information on any changes in modality of treatment.

(5) Failure to reapply every two years shall result in the provider being removed from the approved provider list.

R251-109-5. Approval Process.

(1) It is the policy of UDC that all therapists providing services to sex offenders under the jurisdiction of UDC shall have been reviewed and approved by the screening committee.

(2) Approval may be suspended by either the provider or UDC.

(3) A provider shall be removed from the list of approved providers by written request to UDC.

(4) UDC may suspend approval for:

(a) failure to reapply;

(b) failure to comply with provider protocol;

(c) suspension of clinical licensure;

(d) failure to meet provider standards; or

(e) criminal conviction; or

(f) other legitimate penological reasons as determined by the division director.

(5) Providers who are not approved may appeal that decision to the screening committee within thirty days of denial.

(6) Appeals must contain specific documentation of why the denial was inaccurate.

(a) Providers who are not approved may appeal that decision to the SOTF administration/disciplinary (screening) committee. Should this not be viewed as acceptable, the provider or affiliate may instead appeal to the UDC director of Institutional Programming.

(b) Appeals must contain specific documentation of why the denial was inaccurate and or additional documentation to address concerns that resulted in the denial.

(c) The administration/disciplinary committee should review the appeal and respond within 30 days.

R251-109-6. Program Requirements.

(1) It is the policy of UDC that each provider meets certain accepted standards for treatment of sex offenders.

(2) Treatment programs for sexual offenders convicted of crimes against persons shall have the following intake components available:

(a) complete psycho-sexual evaluation, to include:

(i) sex offender specific testing;

(ii) assessment of personality and intelligence using research validated testing (ie. MMPI, WRAT-4); and

(iii) penile plethysmograph testing, with stimuli which conforms to state statute, for male offenders arousal patterns and establish baselines

(iv) and polygraph examinations for female offenders to determine accountability for sexual offense history.

(b) screening shall include the following co-occuring issues: mental health history, physical health concerns, other criminal behaviors/legal issues, substance abuse, financial, employment, familial issues, and social support network.

(3) Polygraph examination shall be used for offenders when deemed appropriate by the provider and/or UDC staff, examples includes sexual history, deception about criminal behavior.

(4) Following assessment, the provider shall submit a written report to UDC staff including:

(a) findings of testing including specifics on offender's risk to community safety;

(b) the offender's suitability for treatment;

(c) a proposed treatment plan; and

(d) the cost to the offender.

(5) The level of services shall include:

(a) sex offender groups;

(b) individual therapy;

(c) psycho-educational classes;

(d) ongoing transition program; and

(e) a minimum of one monthly progress report to UDC staff.

(6) An intensive treatment program shall be available which includes:

(a) two weekly sex offender group sessions;

(b) individual weekly session;

(c) psycho-educational classes;

(d) on-going transition program; and

(e) a minimum of one monthly progress report to UDC staff.

(7) Intensive treatment shall be conducted on a minimum of three different days per week, based upon risk and clinical judgment.

(8) When treatment is terminated unsuccessfully, the provider shall:

(a) notify UDC staff prior to termination; and

(b) provide notification of discharge from treatment, as a minimum, verbally to AP and P prior to notifying the offender of his or her status.

(c) provide notification by the provider to the supervising agent within 72 hours of unsuccessful termination; a phone call is sufficient for this.

(d) provide written notification (email, fax or letter) to the supervising agent within five business days of offender's discharge, addressing:

(i) reason for termination;

(ii) progress of the offender to date;

(iii) prognosis of the offender; and

(iv) the offender's risk to community.

(9) When treatment is terminated successfully, the provider shall:

(a) notify UDC staff of the recommendation to terminate therapy; and

(b) provide a written report to UDC staff addressing:

(i) issues addressed in therapy;

(ii) the offender's compliance with the treatment plan;

(iii) progress made by the offender;

(iv) prognosis of the offender;

(v) additional services need to address factors, such as continuing care, support network, employment, mental health issues, substance use issues, etc.; and

(vi) results of a current (less than 90 days old), if appropriate, plethysmograph or polygraph, unless prior optimal results deem the requirement as not required.

(10) As requested, the provider shall submit written reports to UDC, courts and the Board of Pardons and Parole, as applicable.

(11) With reasonable notification, therapists shall appear in court or before the Board of Pardons and Parole as needed.

KEY: mental health, corrections, treatment providers, sex offender treatment
May 4, 2016 64-13-10
Notice of Continuation July 23, 2015

R270. Crime Victim Reparations, Administration.
R270-1. Award and Reparation Standards.
R270-1-1. Authorization and Purpose.

As provided in Section 63M-7-506 the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

R270-1-2. Funeral and Burial Award.

A. Pursuant to Subsection 63M-7-511(4)(f), total award for funeral and burial expenses is $7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.

B. Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the $7,000.

C. Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:

1. Three days in-state
2. Five days out-of-state

D. When a victim dies leaving no identifying information, claims made by a provider cannot be considered.

R270-1-3. Negligent Homicide and Hit and Run Claims.

A. Negligent homicide claims shall be considered criminally injurious conduct as defined in Subsection 63M-7-502(9).

B. Pursuant to Subsection 63M-7-502(9)(a), criminally injurious conduct shall not include victims of hit and run crimes.

R270-1-4. Counseling Awards.

A. Pursuant to Subsections 63M-7-502(21) and 63M-7-511(4)(c), out-patient mental health counseling awards are subject to limitations as follows:

1. The reparation officer shall approve a standardized treatment plan.

2. The cost of initial evaluation and testing may not exceed $300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

3. Primary victims of a crime shall be eligible for the lesser of 25 aggregate individual and/or group counseling sessions or $2,500 maximum mental health counseling award.

(a) Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.

4. Secondary victims of a crime shall be eligible for the lesser of 15 aggregate individual and/or group counseling sessions or $1,250 maximum mental health counseling award.

5. Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider when it appears likely that the maximum award will be reached.

6. Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

7. In-patient hospitalization shall only be considered when the treatment has been recommended by a licensed therapist in life-threatening situations. A direct relationship to the crime needs to be established. Acute in-patient hospitalization shall not exceed $600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient hospitalization. All other secondary victims of other crime types are excluded.

8. Residential and day treatment shall only be considered when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. A direct relationship to the crime needs to be established. Residential treatment shall not exceed $300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. All residential clients shall receive routine assessments from a psychiatrist and/or APRN at least once a week for medication management. Day treatment shall not exceed $200 per day and will be capped at $10,000. These charges will be considered payment in full to the provider. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for residential and day treatment. All other secondary victims of other crime types are excluded.

9. Wilderness programs shall not be covered as an appropriate treatment modality when considering inpatient hospitalization, residential or day treatment.

10. Child sexual abuse victims under the age of 13 who become perpetrators shall only be considered for mental health treatment awards directly related to the victimization. Perpetrators age 13 and over who have been child sexual abuse victims shall not be eligible for compensation. The CVRA Board or contracting agency for managed mental health care shall help establish a reasonable percentage regarding victimization treatment for inpatient, residential and day treatment. Out-patient claims shall be determined by the Reparation Officer on a case by case basis upon review of the mental health treatment plan.

11. Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the State of Utah Department of Commerce, Division of Professional and Occupational Licensing, working under the supervision of a supervisor approved by the Division. Student interns otherwise eligible under 58-1-307(1)(b) Exceptions from licensure, and/or the institution/facility/agency responsible for the supervision of the student, shall not be eligible for payment under this rule for counseling services provided by the student.

12. Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

13. The following maximum amounts shall be payable for mental health counseling:

(a) up to $130 per hour for individual and family therapy performed by licensed psychiatrists, and up to $65 per hour for group therapy;

(b) up to $90 per hour for individual and family therapy performed by licensed psychologists and up to $45 per hour for group therapy;

(c) up to $70 per hour for individual and family therapy performed by a licensed master's level therapist or an Advanced Practice Registered Nurse, and up to $35 per hour for group therapy. These rates shall also apply to therapists working towards a license and supervised by a licensed therapist;

(d) The above-mentioned rates shall apply to individuals performing treatment, and not those supervising treatment.

14. Chemical dependency specific treatment will not be compensated unless the Reparation Officer determines that it is directly related to the crime. The CVRA Board may review

extenuating circumstance cases.

R270-1-5. Attorney Fees.

Pursuant to Subsection 63M-7-524(2) attorney fees shall be made within the reparation award and not in addition to the award. If an award is paid in a lump sum, the attorney's fee shall not exceed 15% of the total award; if payments are awarded on an ongoing basis, attorney fees will be paid when warrants are generated but not to exceed 15%. When appeal hearing denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

R270-1-6. Reparation Awards.

Pursuant to Section 63M-7-503, reparation awards can be made to victims of violent crime where restitution has been ordered by the court but appears unlikely the restitution can be paid within a reasonable time period. However, notification of the award will be sent to the courts, prosecuting attorneys, Board of Pardons or probation and parole counselors indicating any restitution monies collected up to the amount of the award will be forwarded to the Crime Victim Reparations Trust Fund.

R270-1-7. Abortion.

Expenses for an abortion that is permitted pursuant to Sections 76-7-301 through 76-7-331 shall be eligible for a reparation award as long as all the requirements of Section 63M-7-511 have been met.

R270-1-8. Emergency Awards.

Pursuant to Section 63M-7-522, emergency awards up to $1000 can be granted. No time limit is required for filing an emergency claim. Processing of emergency claims is three to five days.

R270-1-9. Loss of Earnings.

A. Pursuant to Subsection 63M-7-511(4)(d), the 66-2/3% of the person's weekly salary or wages is calculated on gross earnings.

B. Loss of earnings for primary and secondary victims may be reimbursed for up to a maximum of twelve (12) weeks work loss, at an amount not to exceed the maximum allowed per week by Worker's Compensation guidelines in effect at the time of work loss. The Crime Victim Reparations and Assistance Board may review extenuating circumstances on loss of earnings claims for the purpose of consideration and authorization of extensions beyond set limits.

R270-1-10. Moving, Transportation Expenses.

A. Pursuant to Subsection 63M-7-511(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to $1,000. Board approval is needed where extenuating circumstances exist.

B. Transportation expenses up to $1000 are allowed for crime-related travel including, but not limited to, participation in court hearings and parole hearings as well as medical or mental health visits for primary and secondary victims. The Board may approve travel expenses in excess of $1000 where extenuating circumstances exist.

R270-1-11. Collateral Source.

A. Crime Victim Reparations Trust Fund monies shall be used before State Social Services contract monies when considering out-of-pocket expenses in child sexual abuse cases, if the individuals qualify as victims. If the victim qualifies for Medicaid, the contract monies should be used first.

B. Crime Victim Reparations Trust Fund monies shall be used before the Utah Medical Assistance Program funds when considering allowable benefits for victims of violent crime.

R270-1-12. Record Retention.

A. Pursuant to Section 63M-7-501, retention of Crime Victim Reparations annual report and crime victim case files shall be as follows:

1. Annual reports and other statistical information shall be retained in office for a period of three years and then transferred to State Archives.

2. Crime victim case files shall be retained in office as needed for administrative use. After closure or denial of a case file, case file shall be retained in office for one year and then transferred to State Archives. Case files will be retained in the State Records Center for eleven years and then destroyed.

R270-1-13. Awards.

A. Pursuant to Section 63M-7-521, when billing from the providers exceeds the maximum allowed, the Reparation Officer shall pay the bills by the date of service. The Reparation Officer shall solicit input from the victim when making this determination. When the services and the billings have occurred at the same time, the Reparation Officer shall determine payment on a percentage basis.

R270-1-14. Essential Personal Property.

A. Pursuant to Subsection 63M-7-511(4)(h), essential personal property covers all personal articles necessary and essential for the health and safety of the victim.

B. The Reparation Officer may allow up to $5000 for medically necessary items such as eyeglasses, hearing aids, and wheelchairs. The board may approve expenses for medically necessary items in excess of $5000 where extenuating circumstances exist.

C. The Reparation Officer may allow up to $1500 for essential personal property not included in Subsection (B) such as burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. The board may approve expenses for essential personal property in excess of $1500 where extenuating circumstances exist.

R270-1-15. Subrogation.

A. Pursuant to Section 63M-7-519, subrogation monies collected from the perpetrator, insurance, etc., will be placed in the Crime Victim Reparations Trust Fund and will not be credited toward a particular victim or claimant award amount.

B. Pursuant to Subsection 63M-7-519(2)(a) and (b), in such instances where a settlement against a third party appears imminent, the Director may reduce by up to 33% the lesser of; (a) the amount paid by the state; or (b) the amount of the settlement. Reduction in excess of 33% shall be determined by the CVRA Board with the concurrence of the Director.

R270-1-16. Unjust Enrichment.

A. Pursuant to Subsection 63M-7-510(1)(d), the following criteria shall be used when considering claims involving possible unjust enrichment of an offender:

1. Unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award.

2. Awards shall not be denied on the basis that the offender would be unjustly enriched, if the victim cooperates with investigation and prosecution of the crime and does what is possible to prevent access by the offender to substantial compensation.

3. Payment to third party providers shall be made to prevent monies intended for victim expenses be used by or on behalf of the offender.

4. Collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender shall be examined. However, the victim shall not be penalized for failure of an offender to meet legal obligations to

pay for the cost of the victim's recovery.

5. Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

R270-1-17. Prescription or Over-the-Counter Medications.

A. Reimbursement of prescription or over-the-counter medications and/or medication management services used in conjunction with mental health therapy shall be considered only for the duration of an approved Treatment Plan.

B. Reimbursement of prescription or over-the-counter medications used in conjunction with medical treatment shall be considered only during the course of treatment by the physician.

C. Medication management rates shall be limited to a maximum of $62.50 per thirty minute session.

R270-1-18. Peer Review Committee.

A. A volunteer Peer Review Committee may be established to review issues and/or provide input to Crime Victim Reparations staff on out-patient mental health counseling claims. The composition, duties, and responsibilities of this Committee shall be defined by the Crime Victim Reparations and Assistance Board by written internal policy and procedure.

R270-1-19. Medical Awards.

A. Pursuant to Subsection 63M-7-511(4)(b), medical awards are subject to limitations as follows:

1. All medical costs must be related directly to the victimization and all treatment must be considered usual and customary.

2. The reparation officer reserves the right to audit any and all billings associated with medical care.

3. The reparation officer will not pay any interest, finance, or collection fees as part of the award.

4.a. If the claimant has no medical insurance or other collateral source for payment of the victim's medical bill, Crime Victim Reparations shall pay 70% of billed charges for eligible medical bills.

b. If the claimant has medical insurance or another collateral source for payment of the victim's medical bills, Crime Victim Reparations shall pay the portion of the eligible medical bills that the claimant is obligated to pay pursuant to the insurance agreement.

c. This subsection (4) does not apply to expenses governed by R270-1-4 or R270-1-22.

5. This rule supersedes any other agreements regarding payment of medical bills by Crime Victim Reparations.

6. Child endangerment examinations for children that have been exposed to drugs shall be paid for when the health and safety of the child is at risk and no other collateral source is available. The cost of the exam needs to be an expense incurred by the victim. The writing of evidentiary reports and any form of lab testing shall not be covered as part of the examination.

R270-1-20. Misconduct.

Pursuant to Subsections 63M-7-502(22) and 63M-7-512(1)(b) misconduct shall be considered conduct which contributed to the victim's injury or death or conduct which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in misconduct, the CVR staff shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim or the ability of the victim to have reasonably avoided the incident upon which the claim is based. CVR staff shall not consider any behavior or action of any victim that is committed by the victim while under the duress or experience of threat, exploitation, coercion or any circumstance absent the victim's own willful desire to participate or any behavior or action committed or perceived to have been committed by the victim of any sex crime when determining whether the victim engaged in misconduct.

R270-1-21. Three Year Limitation.

Pursuant to Subsections 63M-7-506(1)(c) and 63M-7-525(2) a claim for benefits expires and no further payments will be made with regard to the claim after three years have elapsed from the date of application with CVR. Reparations Officers may extend claims that have been closed because of the Three Year Limitation rule if extenuating circumstances exist.

R270-1-22. Sexual Assault Forensic Examinations.

A. Pursuant to Subsections 63M-7-502(21) and 63M-7-511(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by CVR in the amount of up to $750.00 for a full examination which must include photo documentation. Pursuant to Section 63M-7-521.5, CVR may also pay for the cost of medication and/or pharmacological management and consultation provided for the purpose of obtaining free medications and 70% of the eligible hospital services and supplies. Payment to the hospital or other eligible facility for the rent or use of an examination room or space for the purpose of conducting a sexual assault forensic exam shall not exceed $350.00. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations:

1. A sexual assault forensic examination shall be reported by the health care provider who performs the examination to law enforcement.

2. Victims shall not be charged for sexual assault forensic examinations.

3. Victims shall not be required to participate in the criminal justice system or cooperate with law enforcement or prosecuting attorneys as a condition of being provided a sexual assault forensic examination or as a condition of payment being made pursuant to this rule.

4. The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations.

5. The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.

6. CVR may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault.

7. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider.

8. The application or billing for the sexual assault forensic examination must be submitted to CVR within one year of the examination.

9. The billing for the sexual assault forensic examination shall:

a. identify the victim by name, address, date of birth, Social Security number, telephone number, patient number;

b. indicate the claim is for a sexual assault forensic examination; and

c. itemize services and fees for services.

10. All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before Crime Victim Reparations Trust Fund monies are used.

Pursuant to Subsection 63M-7-513(5), the Director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source.

11. Evidence will be collected only with the permission of the victim or the legal guardian of the victim.

12. Restitution for the cost of the sexual assault forensic examination may be pursued by CVR.

13. Payment for sexual assault forensic examinations shall be considered for the following:

a. Fees for the collection of evidence, for forensic documentation only, to include:

i. history;

ii. physical; and

iii. collection of specimens and wet mount for sperm.

b. Emergency department services to include:

i. emergency room, clinic room or office room fee;

ii. cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease;

iii. serum blood test for pregnancy;

iv. morning after pill or high dose oral contraceptives for the prevention of pregnancy; and

v. treatment for the prevention of sexually transmitted disease up to four weeks.

14. The victim of a sexual assault that is requesting payment by CVR for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the CVR office.

R270-1-23. Loss of Support Awards.

A. Pursuant to Subsection 63M-7-511(4)(g), loss of support awards shall be covered on death claims only.

B. Except as provided in Subsection (C), loss of support awards are available only to minor children of the deceased victim. Payment of the award may be made to the parent or guardian of the minor child on behalf of the minor child.

C. The Crime Victim Reparations and Assistance Board may approve loss of support awards to persons who are not minor children, but were physically and financially dependent on the deceased victim.

R270-1-25. Secondary Victim.

Secondary victims who are not primary victims pursuant to Subsections 63M-7-502(33) and who are traumatically affected by criminally injurious conduct shall be eligible for compensation as prescribed by the CVRA Board. Secondary victims include only immediate family members (spouse, father, mother, stepparents, grandparents, child, brother, sister, stepchild, stepbrother, stepsister, or legal guardian) or other persons who the Reparation Officer reasonably determines bears an equally significant relationship to the primary victim.

R270-1-26. Victim Services.

A. Pursuant to Subsection 63M-7-506(1)(i), there is established a Victim Services Grant Program.

B. For purposes of Subsection 63M-7-506(1)(i), "sufficient reserve" means enough funds to sustain the operation of the Crime Victim Reparations program, including administrative costs and reparations payments, for one year.

C. The CVRA Board shall annually determine whether a sufficient reserve exists in the Crime Victim Reparation Fund. If a sufficient reserve does not exist, the CVRA Board shall not authorize the Victim Services Grant Program for that year. If a sufficient reserve does exist, the CVRA Board may authorize the Victim Services Grant Program for that year.

D. When the Victim Services Grant Program is authorized, the CVRA Board:

1. shall determine the amount available for the Victim Services Grant Program for that year;

2. shall announce the availability of grant funds through a request for proposals or other similar competitive process approved by the Board; and

3. may establish funding priorities and shall include any priorities in the announcement of grant funds.

E. Requests for funding shall be submitted on a form approved by the CVRA Board.

F. The CVRA Board shall establish a process to review requests for funding and shall make final decisions regarding the approval, modification, or denial of requests for funding. The CVRA Board may award less than the amount determined in Subsection (D)(1). The decisions of the CVRA Board may not be appealed.

G. All awards shall be for a period of not more than one year. An award by the CVRA Board shall not constitute a commitment for funding in future years. The CVRA Board may limit funding for ongoing projects.

H. Award recipients shall submit quarterly reports to the Crime Victim Reparations and Assistance Board on forms established by the Director. The CVR staff shall monitor all victim services grants and provide regular reports to the CVRA Board.

R270-1-27. Nontraditional Cultural Services.

Cultural services rendered in accordance with recognized spiritual or religious methods of healing, legally available in the state of Utah, may be considered for payment. Since a reasonable and customary schedule of charges has not been established, the reparation officer may require the following: a written itemized description of each procedure, function and/or activity performed and an explanation of its benefit to the victim; the location and time involved to perform such services; and a summary of qualifications and experience which allows the service provider to perform the services. Services shall be requested in lieu of traditional treatment methods. Awards shall be deducted from the claimant's outpatient mental health award and shall remain within the allowed limits set upon that benefit. The fund will not pay for intoxicating or psychotropic substances unless prescribed by a medical practitioner licensed to do so. Claim will be denied if no healing benefit can be identified.

KEY: victim compensation, victims of crimes
May 13, 2016 63M-7-501 et seq.
Notice of Continuation June 29, 2011

R277. Education, Administration.
R277-482. Charter School Timelines and Approval Processes.
R277-482-1. 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) Section 53A-1-401, which allows the Board to adopt rules in accordance with its responsibilities;

(c) Section 53A-1a-504, which requires the Board to make rules regarding a charter school expansion or satellite campus;

(d) Sections 53A-1a-505, 53A-1a-515, and 53A-1a-521, which require the Board to make a rule providing a timeline for the opening of a charter school;

(e) Section 53A-1a-513, which directs the Board to distribute funds for charter school students directly to the charter school; and

(f) the Charter School Expansion Act of 1998, 20 U.S.C. Sec. 8063, which directs the Board to submit specific information prior to a charter school's receipt of federal funds.

(2) The purpose of this rule is to establish procedures for timelines and approval processes for charter schools.

R277-482-2. Definitions.

(1) "Amendment" means a change or addition to a charter agreement.

(2) "Charter agreement" means the same as that term is defined in Section 53A-1a-501.3.

(3) "Charter school authorizer" means the same as that term is defined in Section 53A-1a-501.3

(4) "Charter school governing board" means the board designated in a charter agreement to make decisions for the governance and operation of a charter school.

(5) "Expansion" means a proposed increase of students or adding a grade level in an operating charter school with the same school number.

(6) "Satellite charter school" means a charter school affiliated with an operating charter school, which has the same charter school governing board and a similar program of instruction, but has a different school number than the affiliated charter school.

(7) "School number" means a number that identifies a school within an LEA that:

(a) receives money from the state;

(b) enrolls or prospectively enrolls a full-time student;

(c) employs an educator as an instructor who provides instruction consistent with Section R277-502-5;

(d) has one or more assigned administrators;

(e) is accredited consistent with Section R277-410-3; and

(f) administers a required statewide assessment to a student.

R277-482-3. State Charter School Board Applicant Training.

(1) A charter school applicant that is seeking to have a charter authorized by the State Charter School Board shall attend:

(a) pre-application training;

(b) planning year training; and

(c) other training sessions designated by the State Charter School Board.

(2) The State Charter School Board shall schedule pre-application training sessions multiple times annually that may be available electronically.

R277-482-4. Charter School Information for Students and Parents.

(1) A charter school shall have a website that contains the following information:

(a) the charter school's governance structure, including the name, qualification, and contact information of all charter school governing board members;

(b) the number of new students that will be admitted into the school by grade;

(c) the school calendar, which shall include:

(i) the first and last days of school;

(ii) scheduled holidays;

(iii) scheduled professional development days; and

(iv) scheduled non-school days;

(d) timelines for acceptance of new students consistent with Section 53A-1a-506.5;

(e) the requirement and availability of a charter school student application;

(f) the application timeline to be considered for enrollment in the charter school;

(g) procedures for transferring to or from a charter school;

(h) timelines for a transfer;

(i) provisions for payment, if required, of a one-time fee per secondary school enrollment, not to exceed $5.00, consistent with Section 53A-12-103;

(j) the charter school governing board's policies; and

(k) other items required by:

(i) the charter school's authorizer;

(ii) statute; and

(iii) Board rule.

(2) A new or expanding charter school shall have an operative and readily accessible website containing the information described in Subsection (1) at least 180 days before the proposed opening day of school.

R277-482-5. Timelines - Charter School Starting Date and Facilities.

(1) A charter school authorizer may:

(a) accept the proposed starting date from a charter school applicant; or

(b) negotiate and recommend a different starting date to the Board.

(2) A charter school may receive state funds if the charter school is approved as a new charter school by October 1, one fiscal year prior to the state fiscal year the charter school intends to serve students.

(3) A State Charter School Board authorized school shall begin construction on a new or existing facility requiring major renovation, such as requiring a project number consistent with Rule R277-471, no later than January 1 of the year the charter school is scheduled to open.

(4) A State Charter School Board authorized charter school that intends to occupy a facility requiring only minimal renovation, such as renovation not requiring a project number according to Rule R277-471, shall enter into a written agreement no later than May 1 of the calendar year the charter school is scheduled to open.

(5) A charter school shall comply with Rule R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under Section 53A-1a-511.

(6) The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the charter school authorizer's recommendation.

R277-482-6. Procedures and Timelines to Change Charter School Authorizers.

(1) A charter school may transfer to another charter school authorizer.

(2) A charter school shall submit an application to the new charter school authorizer at least 90 days prior to the proposed

transfer.

(3) The charter school authorizer transfer application shall include:

(a) current governing board members;

(b) financial records that demonstrate the charter school's financial position, including the charter school's:

(i) most recent annual financial report (AFR);

(ii) annual project report (APR); and

(iii) audited financial statement;

(c) test scores, including all state required assessments;

(d) current employees and assignments;

(e) board minutes for the most recent 12 months; and

(f) affidavits, signed by all board members certifying:

(i) the charter school's compliance with all state and federal laws and regulations;

(ii) all information on the transfer application is complete and accurate;

(iii) the charter school is current with all charter school governing board policies;

(iv) the charter school is operating consistent with the charter school's charter agreement; and

(v) there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the charter school.

(4) A charter school seeking to transfer charter school authorizers shall submit a position statement from the current charter school authorizer about the charter school's status, compliance with the charter school authorizer requirements, and any unresolved concerns to the proposed new charter school authorizer.

(5) A new charter school authorizer shall review an application for transferring a charter school authorizer for acceptance within 60 days of submission of a complete application, including all required documentation.

(6) Final approval or denial of changing chartering entities to the State Charter School Board is final administrative action by the Board.

R277-482-7. Charter School Expansion Requests.

(1) A charter school authorizer shall maintain the final, official, and complete charter agreement.

(2) A charter school may request approval for an expansion if:

(a) the charter school satisfies the requirements of federal and state law, regulations, rule, and the charter agreement; and

(b)(i) the charter school's charter agreement provides for an expansion consistent with the request; or

(ii) the charter school governing board has submitted a formal amendment request to the charter school authorizer consistent with the charter school authorizer's requirements.

(3) If the charter school authorizer approves a charter school expansion, the expansion shall be approved before October 1 of the state fiscal year prior to the school's intended expansion date.

(4) For an expansion approved by an authorizer that is not the State Charter School Board, the charter school authorizer that authorizes an expansion of the authorizer's charter school shall provide the total number of students by grade that the charter school is authorized to enroll to the State Charter School Board and to the Superintendent on or before October 1 of the state fiscal year prior to the charter school's intended expansion.

R277-482-8. Requests for a New Satellite School for an Approved Charter School.

(1) A charter school and its satellite are a single LEA for purposes of public school funding and reporting.

(2) An existing charter school may submit an amendment request to the charter school's charter authorizer for a satellite charter school if:

(a) the charter school satisfies requirements of federal and state law, regulations, and rule;

(b) the charter school has operated successfully for at least three years meeting the terms of its charter agreement;

(c) the students at the charter school are performing on standardized assessments at or above the standard in the charter agreement;

(d) the proposed satellite charter school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;

(e) adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite charter school; and

(f) the charter school provides any additional information or documentation requested by the charter school authorizer or the Board.

(3) a satellite charter school that receives School LAND Trust funds shall have a charter trust land council and satisfy all requirements for charter trust land councils consistent with Rule R277-477.

(4) A satellite charter school may receive state funding if the Board approves the satellite charter school by October 1 of the state fiscal year prior to the year the school intends to serve students.

(5) The approval of a satellite charter school by the charter school authorizer requires ratification by the Board and will expire 24 months following the ratification if a building site is not secured for the satellite charter school.

KEY: training, timelines, expansion, satellite

May 23, 2016	**Art X Sec 3**
Notice of Continuation March 30, 2016	**53A-1-401**
	53A-1a-504
	53A-1a-505
	53A-1a-515
	53A-1a-513
	53A-1a-521

R277. Education, Administration.
R277-505. Education Leadership License Areas of Concentration and Programs.
R277-505-1. 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-6-104, which permits the Board to issue certificates for educators; and

(c) Section 53A-1-401, which allows the Board to adopt rules in accordance with its responsibilities.

(2) The purpose of this rule is to:

(a) specify the requirements for education leadership license areas of concentration;

(b) provide standards and procedures for district-specific and charter school-specific education leadership license areas of concentration; and

(c) specify the requirements for an education leadership preparation program that must be met to receive Board approval of the program.

R277-505-2. Definitions.

(1) "Education leadership license area of concentration" means the initial credential issued by the Board that authorizes a holder to be employed in a position that requires the license holder to administer educational programs or supervise educators in improving educational practices and outcomes within the public education system, including the administration and supervision of a school.

(2) "Internship" means an on-site supervised experience in an accredited public or private school or other approved location.

(3) "Level 2 license" means a Utah professional educator license issued to an applicant after the Level 2 applicant:

(a) completes all requirements for a Level 1 license;

(b) completes the requirements under R277-522 for a teacher whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school;

(c) completes:

(i) at least three years of successful education experience in a Utah public LEA or accredited private school; or

(ii)(A) one year of successful education experience in a Utah public LEA or accredited private school; and

(B) at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and

(d) completes additional requirements established by law or rule;

(4) "Level 3 license" means a Utah professional educator license issued to an educator who:

(a) holds a current Utah Level 2 license; and

(b) receives:

(i) National Board Certification;

(ii) a doctorate in:

(A) education; or

(B) a field related to a content area in a unit of the public education system or an accredited private school; or

(iii)(A) a Speech-Language Pathology area of concentration; and

(B) currently holds American Speech-Language Hearing Association (ASHA) certification.

(5) "LEA governing board" means:

(a) for a school district, the school district's local school board; or

(b) for a charter school, the charter school's charter school governing board.

R277-505-3. Education Leadership License Area of Concentration Positions.

(1) An LEA shall determine the various positions and settings in which an individual must hold an Education Leadership license area of concentration in accordance with the requirements of Sections:

(a) 53A-1a-511;

(b) 53A-3-301;

(c) 53A-6-104.5;

(d) 53A-6-110; and

(e) this Board rule.

(2) An LEA's governing board shall adopt a policy, in an open and public meeting, that describes the required licenses or credentials for administrators in the LEA's schools.

R277-505-4. Education Leadership License Area of Concentration Requirements.

(1) Except as provided in Subsection (2), an applicant for an education leadership license area of concentration may be granted an education leadership license area of concentration if the applicant:

(a) holds a master's degree or more advanced degree;

(b) passes a Board-approved education leadership test; and

(c)(i) completes a Board-approved education leadership licensure program; or

(ii) subject to Subsection (3), holds an education leadership license valid in another state under the NASDTEC interstate agreement.

(2) The Board may grant an education leadership license area of concentration to an applicant for:

(a) exceptional professional experience, including non-education experience;

(b) exceptional education accomplishments; or

(c) other noteworthy experiences or circumstances.

(3) An applicant that holds an education leadership license valid in another state under the NASDTEC interstate agreement as described in Subsection (1)(c)(ii) shall complete:

(a) at least one year of education leadership experience in that state; or

(b) an education leadership internship substantially equivalent to the internship required for Board-approved education leadership licensure programs as described in this rule.

R277-505-5. Standards for the Approval of Programs for Education Leadership Licensure.

(1) The Board may approve the education leadership licensure preparation program of an institution of higher education if the program:

(a) prepares candidates to meet the Utah educational leadership Standards described in R277-530;

(b) subject to Subsection (2), establishes entry requirements designed to ensure that only high quality individuals enter the licensure program;

(c) includes coursework specifically designed to prepare candidates to:

(i) properly utilize data, including student performance data, to evaluate educator and school performance and provide actionable information to educators to improve instruction;

(ii) facilitate educator use of technology to support and meaningfully supplement the learning of students in traditional, online-only, and blended classrooms

(iii) collaborate with all stakeholder groups to create a shared vision, mission, and goals for a school;

(iv) communicate effectively with parents, community groups, staff, and students;

(v) recognize effective and ineffective instructional practice in order to ensure authentic learning and assessment experiences for all students;

(vi) counsel educators in relation to the educator's evaluation, professional learning, and student performance to improve the educator's practice;

(vii) ensure a safe, secure, emotionally protective and healthy school environment, including the prevention of bullying and youth suicide; and

(viii) connect management operations, policies, and resources to the vision and values of the school; and

(d) includes a minimum of 50 hours of clinical experience in elementary and secondary schools throughout program coursework.

(2) Beginning on January 1, 2017, the entry requirements described in Subsection (1)(b) shall require an individual entering a Board-approved education leadership licensure program to:

(a) clear a USOE fingerprint background check;

(b) hold a Level 2 or 3 Utah educator license;

(c) have been deemed effective or higher by:

(i) an evaluation system meeting the standards of R277-531; or

(ii) the LEA's equivalent on the applicant's most recent evaluation;

(d) have a recommendation from:

(i) the individual's immediate administrative supervisor; or

(ii) an LEA-level administrator with knowledge regarding the individual's potential as an education leader; and

(e) pass an interview conducted by the program to measure the potential of the individual as an education leader.

(3) A Board-approved education leadership licensure program may waive the entrance requirements described in Subsections (2)(b) through (e) based on program established guidelines for no more than ten percent of an incoming cohort.

(4) A Board-approved education leadership licensure program shall ensure that each incoming cohort after January 1, 2017 has a mean post-secondary G.P.A. of 3.0 or higher.

(5) A Board-approved education leadership licensure program is exempt from the entrance requirements in R277-502-3(C)(6).

(6) For a program applicant accepted on or after January 1, 2017, a Board-approved education leadership licensure program shall require the following opportunities for a program applicant to demonstrate application of knowledge and skills gained through the program in a culminating experience:

(a) analyzing school assessment data from common formative assessments, summative assessments, standardized assessments, and interim or benchmark assessments with school staff and with individual teachers;

(b) participating in all aspects of at least two teacher evaluations using an evaluation system that meets the requirements of:

(i) R277-531; or

(ii) the LEAs equivalent;

(c) participating in all aspects of at least one evaluation of a classified employee;

(d) planning, or participating in the planning of, organizing, conducting, and evaluating the effectiveness of a professional development activity for school staff;

(e) participating in multiple meetings of more than one school-based learning team;

(f) participating in School Community Council meetings including the annual development and evaluation of the School Improvement Plan or the School LAND Trust plan;

(g) participating in multiple classroom observations and walk-throughs;

(h) participating in multiple IEP and 504 accommodation plan meetings in support of or as the LEA representative;

(i) handling multiple cases of student discipline referred to the school office for more than one type of misconduct;

(j) supervising a variety of after school activities and monitoring the process for collecting and handling fees and gate receipts;

(k) participating in the school's screening process, including interviews and the notification of successful and unsuccessful applicants; and

(l) any additional specific experiences as defined by the program.

(7) A program applicant shall complete the competencies described in Subsection (6) by participating in one of the following culminating experiences:

(a) employment in an education leadership position where the educator:

(i) supervises other educators and that meets the following requirements:

(ii) is employed half-time or more in the position for a full school year;

(iii) is mentored by a licensed education leader that has been deemed effective or higher by:

(A) an evaluation meeting the standards of R277-531; or

(B) the LEA's equivalent on the educator's most recent evaluation;

(iv) works a minimum of 100 hours in a minimum of two hour blocks during the regular school day and the regular school year in an elementary school where the educator is not employed if the educator is not employed as an elementary principal or vice-principal; and

(v) works a minimum of 100 hours in a minimum of two hour blocks during the regular school day and the regular school year in a secondary school where the educator is not employed if the educator is not employed as a secondary principal or vice-principal; or

(b) an internship where the educator:

(i) works a minimum of 400 hours of supervised clinical experiences, excluding additional hours required by a university for seminars or discussion sessions within the required hours;

(ii) works a minimum of 300 of the required hours in a school setting which offers the opportunity of working with:

(A) students, faculty, classified employees, parents, and patrons; and

(B) a licensed principal that has been deemed effective or higher by:

(I) an evaluation system meeting the standards of R277-531; or

(II) the LEA's equivalent on the principal's most recent evaluation;

(iii) works the remainder of the required internship hours in a school district office; at the USOE; with a Board-approved agency; or in another Board-approved program or school setting;

(iv) works the majority of the school-level supervised experience completed during the regular school day and in concentrated blocks of a minimum of two hours each when students are present;

(v) works a minimum of 150 hours in an elementary school;

(vi) works a minimum of 150 hours in a secondary school; and

(vii) works a minimum of 32 hours in concentrated blocks of a minimum of eight hours each during the regular school day and the regular school year in a school in which the intern is not employed as a teacher.

(8) The Superintendent may approve a culminating experience proposal that does not meet the requirements of Subsection (6) to pilot innovative or alternative practice if:

(a) a Board-approved education leadership licensure program and a partner LEA submit a joint proposal to the Superintendent; and

(b) the proposal is for a maximum of two years.

(9) The Superintendent shall report the results of a pilot

described in Subsection (8)(a) to the Board after completion.

R277-505-6. LEA-specific Competency-based License for Education Leadership Area of Concentration.

An LEA may request an LEA-specific competency-based license for an education leadership area of concentration under Subsection R277-503-4D for an individual if the individual has successfully completed:

(1) a master's degree or more advanced degree; and

(2) a Board-approved education leadership test.

R277-505-7. Education Leadership Tier Two Credentials.

(1) The Superintendent shall work with LEAs and Board-approved licensure programs to create a tier two principal credential that may be earned by an individual employed as a principal or vice-principal.

(2) In the first year of employment as an education leader, an individual shall complete a one school year mentoring experience established and supervised by the employing LEA in consultation with a Board-approved education leadership program that includes criteria identified in R277-522-3A and B, as applied to education leaders.

(3) An individual employed for the first time as a Utah school principal or vice-principal after June 30, 2019 in a school district shall complete the tier two principal credential within the first three years of employment as a principal or vice-principal.

(4) An individual holding a Utah Administrative/Supervisory (K-12) license area of concentration shall be considered to hold an education leadership license area of concentration and the tier two principal credential for all licensure purposes.

(5) The Superintendent shall work with LEAs and Board-approved licensure programs to develop additional tier two leadership credentials intended to provide specialized skills for individuals holding an education leadership license area of concentration.

KEY: professional competency, teacher certification, accreditation

May 23, 2016	**Art X Sec 3**
Notice of Continuation March 30, 2016	**53A-6-101(1)**
	53A-6-101(2)
	53A-1-401

R277. Education, Administration.
R277-510. Educator Licensing - Highly Qualified Assignment.
R277-510-1. 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-6-104, which directs the Board to establish rules setting minimum standards for educators who provide direct student services; and

(c) 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 provide definitions and requirements for an educator assignment to meet federal requirements for highly qualified status.

R277-510-2. Definitions.

(1) "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

(2) "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23) or 34 CFR 200.56.

(3) "License endorsement" or "endorsement" means:

(a) a speciality field or area earned through completing required course work established by the Superintendent or through demonstrated competency approved by the Superintendent; and

(b) listed on the Professional Educator License indicating the specific qualifications of the holder.

(4) "NCLB" means the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), 20 U.S.C. 7801.

(5) "Restricted endorsement" means an endorsement available and limited to teachers in necessarily existent small schools as determined under R277-445 that includes at least nine semester hours of Superintendent-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

(6) "Teacher of record" for the purposes of this rule means the teacher to whom students are assigned for purposes of reporting for data submissions to the Superintendent.

R277-510-3. NCLB Highly Qualified Assignments - Early Childhood Teachers K-3.

(1) For a teacher assignment in kindergarten through grade 3 to be designated as NCLB highly qualified, the teacher shall have:

(a) a bachelor's degree;

(b) a Utah educator license with an early childhood area of concentration; and

(c) a passing score at the level designated by the Superintendent on a Board-approved content knowledge test.

(2) NCLB requirements do not apply to pre-k assignments.

R277-510-4. NCLB Highly Qualified Assignments - Elementary Teachers 1-8.

For a teacher assignment in grades 1 through 8 in an elementary setting to be designated as NCLB highly qualified, the teacher shall have:

(1) a bachelor's degree;

(2) a Utah educator license with an elementary area of concentration; and

(3) a passing score at the level designated by the Superintendent on a Board-approved content knowledge test.

R277-510-5. NCLB Highly Qualified Assignments - Secondary Teachers 6-12.

(1) For a teacher assignment in grades 6 through 12 to be designated as NCLB highly qualified, the teacher shall have:

(a) a bachelor's degree;

(b) a Utah educator license with a secondary area of concentration and endorsement in the content area assigned; and

(c) at least one of the following in the assignment content area:

(i) a university major degree, masters degree, doctoral degree, or National Board Certification in a related NCLB core academic content area;

(ii) a course work equivalent of a major degree (30 semester or 45 quarter hours) in a related NCLB core academic content area; or

(iii) a passing score at the level designated by the Superintendent on a Board-approved content knowledge test in a related NCLB core academic content area; if no Board-approved test is available, an endorsement is sufficient for highly qualified status.

(2) An assignment in grades 7 or 8 in a secondary setting given to a teacher holding an elementary area of concentration may be designated as NCLB highly qualified if the teacher holds an endorsement in the content area and meets one of the requirements of Subsection R277-510-5(1)(c).

(3) The requirements described in this section only apply to NCLB core academic subject assignments.

(4) Each NCLB core academic course assignment in grades 6 through 12 is subject to the above standards.

R277-510-6. NCLB Highly Qualified Assignments - Special Education Teachers.

(1) For a special education teacher assignment in grades k-8, excluding grade 7 or 8 mathematics, as the classroom teacher of record for a NCLB core academic subject to be designated as NCLB highly qualified, the teacher shall have:

(a) a bachelor's degree;

(b) a Utah educator license with a special education area of concentration; and

(c) a passing score on a Board-approved elementary content test.

(2) A special educator who would be NCLB highly qualified as a teacher of record in an elementary or early childhood regular education assignment is also NCLB highly qualified as a teacher of record in a special education assignment.

(3) For a special education teacher assignment in grades 7-12 as the classroom teacher of record for a NCLB core academic subject to be designated as NCLB highly qualified, the teacher shall have:

(a) a bachelor's degree;

(b) a Utah educator license with a special education area of concentration; and

(c) any one of the following in the assignment content area:

(i) a passing score at the level designated by the Superintendent on a Board-approved content knowledge test in a related NCLB core academic content area;

(ii) documentation of satisfactory professional development and experience as approved by the Superintendent in a related NCLB core academic content area;

(iii) a university major degree, masters degree, doctoral degree, or National Board Certification in a related NCLB core academic content area; or

(iv) a course work equivalent of a major degree (30 semester or 45 quarter hours) in a related NCLB core academic content area.

(4)(a) IDEA may contain requirements for teacher qualifications in addition to the requirements of NCLB and this

rule.

(b) R277-510 does not replace, supersede, or nullify any of the teacher qualification requirements of IDEA.

R277-510-7. NCLB Highly Qualified Assignments - Necessarily Existent Small Schools 7 - 12.

For a necessarily existent small school teacher assignment in grades 7 through 12 to be designated as NCLB highly qualified, the teacher shall have:

(1) a bachelor's degree;

(2) an educator license with a secondary area of concentration;

(3) an endorsement in the assignment content area; and

(4) at least one of the following in the assignment content area:

(a) a university major degree, masters degree, doctoral degree, or National Board Certification;

(b) a course work equivalent of a major degree (30 semester or 45 quarter hours);

(c) a passing score at the level designated by the Superintendent on a Board-approved content knowledge test; or

(d) documentation of satisfactory professional development and experience as approved by the Superintendent in a related NCLB core academic content area.

R277-510-8. LEA Highly Qualified Plans.

(1) An LEA shall submit a plan to the Superintendent describing strategies for progressing toward and maintaining the highly qualified status of all educator assignments.

(2) A plan described in Subsection (1) shall be updated annually.

(3) The Superintendent shall review LEA plans and provide technical support to LEAs to assist them in carrying out their plans to the extent of staff and resources available.

(4) The Superintendent shall set timelines for submission and review of LEA plans.

R277-510-9. Highly Qualified Timelines and Rules in Relation to Other Board Rules.

(1) Documented determinations of highly qualified status under previously enacted Board rules shall remain in effect notwithstanding any subsequent changes in highly qualified requirements.

(2) Other Board rules may include requirements related to licensure or educator assignment that do not specifically apply to NCLB highly qualified assignment status.

(3) This R277-510 does not supersede, replace, or nullify any of the requirements in other Board rules.

KEY: educators, highly qualified
March 9, 2016 **Art X Sec 3**
Notice of Continuation January 14, 2016 **53A-1-401(1)(a)**
53A-1-401(3)

R277. Education, Administration.
R277-707. Enhancement for Accelerated Students Program.
R277-707-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Accelerated students" means children and youth whose superior academic performance or potential for accomplishment requires a differentiated and challenging instructional model that may include the following:

(1) Advanced placement courses: rigorous courses developed by College Board. Each course is developed by a committee composed of college faculty and AP teachers, and covers the breadth of information, skills, and assignments found in the corresponding college course. Students who perform well on the AP exam may be granted credit and/or advanced standing at participating colleges or universities.

(2) Gifted and talented programs: programs to assist individual students to develop their high potential and enhance their academic growth and identify students with outstanding abilities who are capable of high performance in the following areas:

(a) general intellectual ability;

(b) specific academic aptitude; and

(c) creative or productive thinking.

(3) International Baccalaureate (IB) Program; a program established by the International Baccalaureate Organization. The Diploma Program is a rigorous pre-university course of study. Students who perform well on the IB exam may be granted credit and/or advanced standing at participating colleges or universities. The Middle Years Program (MYP) and Primary Years Program (PYP) emphasize an inquiry learning approach to instruction.

C. "Local Education Agency (LEA)" means a public school district or charter school, primarily intended to serve students grade K through 12.

D. "Weighted Pupil Unit (WPU)" means the basic state funding unit.

E. "USOE" means the Utah State Office of Education.

F. "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the USOE through which local education agencies submit plans and budgets for USOE approval.

R277-707-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education system in the Board; Section 53A-17a-165 which allows the Board to adopt rules for the expenditure of funds appropriated for Enhancement for Accelerated Students Program; Section 53A-17a-165(5) which authorizes the Board to develop a funding formula and performance criteria to measure the effectiveness of the Enhancement for Accelerated Students Program; and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the procedures for distributing funds appropriated under Section 53A-17a-165 to LEAs. The intent of this appropriation is to enhance the academic growth of students whose academic achievement is accelerated.

R277-707-3. Eligibility, Application, Distribution and Use of Funds.

A. All LEAs are eligible to apply for the Enhancement for Accelerated Students Program funds using the UCA.

B. LEAs shall have a process for identifying students whose academic achievement is accelerated based upon multiple assessment instruments. These instruments shall not be solely dependent upon English vocabulary or comprehension skills and shall take into consideration abilities of culturally diverse students and students with disabilities.

C. The distribution formula includes an allocation of money for:

(1) Advanced Placement courses:

(a) The designated funds for the Advanced Placement Program equal 0.38 multiplied by the difference between the funds appropriated for the Enhancement for Accelerated Students Program less the allotment under Section 53A-17a-165(3).

(b) The total funds designated for the Advanced Placement Program are divided by the total number of Advanced Placement exams passed with a grade of 3 or higher by students. This results in a fixed amount per exam passed. Each participating LEA shall receive that amount for each exam successfully passed by one of its students.

(2) Gifted and Talented programs:

(a) The designated funds for the Gifted and Talented Program equal 0.62 multiplied by the difference between the funds appropriated for the Enhancement for Accelerated Students Program less the allotment under Section 53A-17a-165(3).

(b) Each LEA shall receive its share of funds in the proportion that the LEA's number of weighted pupil units for kindergarten through grade twelve bears to the state total.

(3) international baccalaureate programs: LEAs shall have an IB authorized program to qualify for funds.

(i) Fifty percent of the total funds designated for IB consistent with Section 53A-17a-165(3) shall be equally distributed among all authorized IB programs in the state.

(ii) The remaining fifty percent of allocation shall be distributed to LEAs with Diploma Programs where students scored a grade of 4 or higher on IB exams, resulting in a fixed amount of dollars per exam passed.

R277-707-4. Performance Criteria and Reports.

A. LEAs receiving funds shall be required to submit an annual evaluation report to the USOE consistent with Section 53A-17a-165. The report shall include the following performance criteria related to the identified students whose academic achievement is accelerated:

(1) Number of identified students disaggregated by subgroups;

(2) Graduation rates for identified students;

(3) Number of AP classes taken, completed, and exams passed with a score of 3 or above by identified students;

(4) Number of IB classes taken, completed, and exams passed with a score of 4 or above by identified students;

(5) Number of Concurrent Enrollment classes taken and credit earned by identified students;

(6) ACT or SAT data (number of students participating, at or above the college readiness standards);

(7) Gains in proficiency in language arts; and

(8) Gains in proficiency in mathematics.

B. The USOE shall submit an annual report on program effectiveness to the Public Education Appropriations Subcommittee of the Utah State Legislature.

KEY: accelerated learning, enhancement program

August 8, 2011	**Art X Sec 3**
Notice of Continuation May 16, 2016	**53A-17a-165**
	53A-17a-165(5)
	53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-210. Stationary Sources.
R307-210-1. Standards of Performance for New Stationary Sources (NSPS).

The provisions of 40 Code of Federal Regulations (CFR) Part 60, effective on July 1, 2014, except for Subparts Cb, Cc, Cd, Ce, BBBB, DDDD, and HHHH, are incorporated by reference into these rules with the exception that references in 40 CFR to "Administrator" shall mean "director" unless by federal law the authority referenced is specific to the Administrator and cannot be delegated.

KEY: air pollution, stationary sources, new source review
June 4, 2015 19-2-104(3)(q)
Notice of Continuation May 12, 2016 19-2-108

R307. Environmental Quality, Air Quality.
R307-801. Utah Asbestos Rule.
R307-801-1. Purpose and Authority.

This rule establishes procedures and requirements for asbestos abatement or renovation projects and training programs, procedures and requirements for the certification of persons and companies engaged in asbestos abatement or renovation projects, and work practice standards for performing such projects. This rule is promulgated under the authority of Utah Code Annotated 19-2-104(1)(d), (3)(a)(iii), (3)(b)(iv)(A), (B), and (C), (3)(b)(v), (6)(a), and (6)(b). Penalties are authorized by Utah Code Annotated 19-2-115. Fees are authorized by Utah Code Annotated 19-1-201(2)(i).

R307-801-2. Applicability and General Provisions.

(1) Applicability.

(a) The following persons are operators and are subject to the requirements of R307-801:

(i) Persons who contract for hire to conduct asbestos abatement, renovation, or demolition projects in regulated facilities;

(ii) Persons who conduct asbestos abatement, renovation, or demolition projects in areas where the general public has unrestrained access;

(iii) Persons who conduct asbestos abatement, renovation, or demolition projects in school buildings subject to AHERA or who conduct asbestos inspections in facilities subject to TSCA Title II; or

(iv) Persons who perform regulated work activities or renovation projects in single or multifamily residential structures where they do not live or intend to live immediately after the regulated work activity or renovation project is complete.

(b) The following persons are subject to certification requirements:

(i) Persons required by TSCA Title II or R307-801 to be accredited as inspectors, management planners, project designers, renovators, asbestos abatement supervisors, or asbestos abatement workers;

(ii) Persons who work on asbestos abatement projects as asbestos abatement workers, asbestos abatement supervisors, inspectors, project designers, or management planners;

(iii) Persons who perform regulated work activities or renovation projects in single or multifamily residential structures where they do not live or intend to live immediately after the regulated work activity or project is complete; or

(iv) Companies that conduct asbestos abatement projects, renovation projects, inspections, create project designs, or prepare management plans in regulated facilities.

(c) Homeowners or condominium owners performing renovation or demolition activities in or on their own residential facilities where they live, that are otherwise not subject to the Asbestos NESHAP, are not subject to the requirements of this rule, however, a condominium complex of more than four units is subject to this rule and may also be subject to the Asbestos NESHAP regulation.

(d) Contractors for hire performing renovation or demolition activities are required to follow the inspection provisions of R307-801-9 and R307-801-10 and the notification provisions of R307-801-11 and R307-801-12.

(2) General Provisions.

(a) All persons who are required by R307-801 to obtain an approval, certification, determination, or notification from the director shall obtain it in writing.

(b) Persons wishing to deviate from the certification, notification, work practices, or other requirements of R307-801 may do so only after requesting and obtaining the written approval of the director.

R307-801-3. Definitions.

The following definitions apply to R307-801:

"Adequately Wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material is not adequately wet. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

"Amended Water" means a mixture of water and a chemical wetting agent that provides control of asbestos fiber release.

"AHERA" means the federal Asbestos Hazard Emergency Response Act of 1986 and the Environmental Protection Agency implementing regulations, 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools.

"AHERA Facility" means any structure subject to the federal AHERA requirements.

"Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite-tremolite, and Libby amphibole.

"Asbestos Abatement Project" means any activity involving the removal, repair, demolition, salvage, disposal, cleanup, or other disturbance of regulated asbestos-containing material greater than the small scale short duration (SSSD) amount of asbestos-containing material.

"Asbestos Abatement Supervisor" means a person who is certified according to R307-801-6 and is responsible for ensuring work is conducted in accordance with the regulations and best work practices for asbestos abatement or renovation projects.

"Asbestos Abatement Worker" means a person who is certified according to R307-801-6 and performs asbestos abatement or renovation projects.

"Asbestos-Containing Material (ACM)" means any material containing more than 1% asbestos by the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM), or, if the asbestos content is greater than a trace amount of asbestos, but less than 10% asbestos, the asbestos concentration shall be determined by point counting using PLM or any other method acceptable to the director.

"Asbestos-Containing Waste Material (ACWM)" means any waste generated from regulated asbestos-containing material (RACM) that contains any amount of asbestos and is generated by a source subject to the provisions of R307-801. This term includes filters from control devices, friable asbestos-containing waste material, and bags or other similar packaging contaminated with asbestos. As applied to demolition and renovation projects, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

"Asbestos Inspection" means any activity undertaken to identify the presence and location, or to assess the condition, of asbestos-containing material or suspected asbestos-containing material, by visual or physical examination, or by collecting samples of the material. This term includes re-inspections of the type described in AHERA, 40 CFR 763.85(b), of known or assumed asbestos-containing material which has been previously identified. The term does not include the following:

(a) Periodic surveillance of the type described in AHERA, 40 CFR 763.92(b), solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;

(b) Inspections performed by employees or agents of federal, state, or local government solely for the purpose of regulatory oversight and/or determining compliance with applicable statutes or regulations; or

(c) Visual inspections of the type described in AHERA, 40 CFR 763.90(i), solely for the purpose of determining

completion of response actions.

"Asbestos Inspection Report" means a written report as specified in R307-801-10(6) describing an asbestos inspection performed by a certified asbestos inspector.

"Asbestos NESHAP" means the National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M, National Emission Standard for Asbestos.

"Asbestos Removal" means the stripping of friable ACM from regulated facility components or the removal of structural components that contain or are covered with friable ACM from a regulated facility.

"Category I Non-Friable Asbestos-Containing Material" means asbestos-containing packings, gaskets, resilient floor coverings, or asphalt roofing products containing more than 1% asbestos as determined by using the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM).

"Category II Non-Friable Asbestos-Containing Material" means any material, excluding Category I non-friable ACM, containing more than 1% asbestos as determined by using the methods specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM) that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

"Condominium" means a building or complex of buildings in which units of property are owned by individuals and common parts of the property, such as the grounds, common areas, and building structure, are owned jointly by the condominium unit owners.

"Containerized" means sealed in a leak-tight and durable container.

"Debris" means friable or regulated asbestos-containing material that has been dislodged and has fallen from its original substrate and position or which has fallen while remaining attached to substrate sections or fragments.

"Demolition Project" means the wrecking, salvage, or removal of any load-supporting structural member of a regulated facility together with any related handling operations, or the intentional burning of any regulated facility. This includes the moving of an entire building, but excludes the moving of structures, vehicles, or equipment with permanently attached axles, such as trailers, motor homes, and mobile homes that are specifically designed to be moved.

"Director" means the Director of the Utah Division of Air Quality.

"Disturb" means to disrupt the matrix, crumble, pulverize, or generate visible debris from ACM or RACM.

"Emergency Abatement or Renovation Project" means any asbestos abatement or renovation project which was not planned and results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden as determined by the director. This term includes operations necessitated by non-routine failure of equipment, natural disasters, fire, or flooding, but does not include situations caused by the lack of planning.

"Encapsulant" means a permanent coating applied to the surface of friable ACM for the purpose of preventing the release of asbestos fibers. The encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Friable Asbestos-Containing Material" means any asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

"Glove bag" means an impervious plastic bag-like enclosure, not to exceed 60 x 60 inches, affixed around an asbestos-containing material, with glove-like appendages through which material and tools may be handled.

"General Building Remodeling Activities" means the alteration in any way of one or more regulated structure components, excluding asbestos abatement, renovation, and demolition projects.

"Government Official" means an engineer, building official, or health officer employed by a governmental jurisdiction that has a responsibility for public safety or health in the jurisdiction where the structure is located.

"High-Efficiency Particulate Air (HEPA)" means a filtration system capable of trapping and retaining at least 99.97% of all mono-dispersed particles 0.3 micron in diameter.

"Inaccessible" means in a physically restricted or obstructed area, or covered in such a way that detection or removal is prevented or severely hampered.

"Inspector" means a person who is certified according to R307-801-6, conducts asbestos inspections, or oversees the preparation of asbestos inspection reports.

"Libby Amphibole" means loose-fill vermiculite type insulation material originating in Libby, Montana, or elsewhere, used in regulated facilities subject to this rule and has greater than 1% asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite, as defined earlier in this section, and winchite, richterite, tremolite, magnesio-riebikite, magnesio-arfvedsonite, and edenite using United States Environmental Protection Agency Method EPA/600/R93/116 or other method as approved by the director.

"Management Plan" means a document that meets the requirements of AHERA for management plans for asbestos in schools.

"Management Planner" means a person who is certified according to R307-801-6 and oversees the preparation of management plans for school buildings subject to AHERA.

"Model Accreditation Plan (MAP)" means 40 CFR Part 763, Subpart E, Appendix C, Asbestos Model Accreditation Plan.

"NESHAP Amount" means combined amounts in a project that total:

(a) 260 linear feet (80 linear meters) of pipe covered with RACM;

(b) 160 square feet (15 square meters) of RACM used to cover or coat any duct, boiler, tank, reactor, turbine, equipment, structural member, or regulated facility component; or

(c) 35 cubic feet (one cubic meter) of RACM removed from regulated facility structural members or components where the length and area could not be measured previously.

"NESHAP Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building, (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential co-operative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to the Asbestos NESHAP is not excluded, regardless of its current use or function.

"NESHAP-Sized Project" means any project that involves at least the NESHAP amount of ACM.

"Non-Friable Asbestos-Containing Material" means any material containing more than 1% asbestos, as determined using the methods specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM), that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

"Open Top Catch Bag" means either an asbestos waste bag or six mil polyethylene sheeting which is sealed at both ends and used by certified asbestos abatement workers, in a manner

not to disturb the matrix of the asbestos-containing material, to collect preformed RACM pipe insulation in either a crawl space or pipe chase less than six feet high or less than three feet wide.

"Phased Project" means either an asbestos abatement, renovation, or demolition project that contains multiple start and stop dates corresponding to separate operations or areas where the entire asbestos abatement, renovation, or demolition project cannot or will not be performed continuously.

"Preformed RACM Pipe Insulation" means prefabricated asbestos-containing thermal system insulation on pipes formed in sections that can be removed without disturbing the matrix of the asbestos-containing material.

"Project Designer" means a person who is certified according to R307-801-6 and prepares a design for an asbestos abatement project in school buildings subject to AHERA or prepares an asbestos clean-up plan in a regulated facility where an asbestos disturbance greater than the SSSD amount has occurred.

"Regulated Asbestos-Containing Material (RACM)" means friable ACM, Category I non-friable ACM that has become friable, Category I non-friable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or Category II non-friable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation project operations.

"Regulated Facilities" means residential facilities, AHERA facilities, or NESHAP facilities where:

(a) A sample has been identified and analyzed to contain, or is assumed under R307-801-10(5) to contain, greater than 1% asbestos; and

(b) The material from where the sample was collected will be disturbed and rendered friable during the abatement, demolition, or renovation activities.

"Regulated Facility Component" means any part of a regulated facility including equipment.

"Renovation Project" means any activity involving the removal, repair, salvage, disposal, cleanup, or other disturbance of greater than the SSSD amount of RACM, but less than the NESHAP amount of RACM, and the intent of the project is not asbestos abatement or demolition. Renovation Projects can be performed in NESHAP or residential facilities, but cannot be performed in AHERA facilities.

"Renovator" means a person who is certified according to R307-801-6 and is responsible for ensuring work that is conducted on a renovation project is performed in accordance with the regulatory requirements and best work practices for a greater than the SSSD amount of RACM, but less than the NESHAP amount of RACM, where the intent of the project is to perform a renovation project and not to perform an asbestos abatement or demolition project. Renovation projects can be performed in NESHAP or residential facilities but cannot be performed in AHERA facilities.

"Residential Facility" means a building used primarily for residential purposes, has four or fewer units, is otherwise not subject to the Asbestos NESHAP, and is not a residential outbuilding structure of less than 100 square feet.

"Small-Scale, Short-Duration (SSSD)" means a project that removes or disturbs less than three square feet or three linear feet of RACM in a regulated facility.

"Sprayed-on or Painted-on Ceiling Treatment" means a surfacing material or treatment that has been applied to the ceiling regardless of application method. The application of paint that has no added materials is not considered a ceiling treatment.

"Strip" means to take off ACM from any part of a regulated facility or a regulated facility component.

"Structural Member" means any load-supporting member of a regulated facility, such as beams and load-supporting walls or any non-load supporting member, such as ceilings and non-load supporting walls.

"Suspect or Suspected Asbestos-Containing Material" means all building materials that have the potential to contain asbestos, except building materials made entirely of glass, fiberglass, wood, metal, or rubber.

"Training Hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

"TSCA" means the Toxic Substances Control Act.

"TSCA Accreditation" means successful completion of training as an inspector, management planner, project designer, contractor-supervisor, or worker, as specified in the TSCA Title II.

"TSCA Title II" means 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response.

"Unrestrained Access" means without fences, closed doors, personnel, or any other method intended to restrict public entry.

"Waste Generator" means any owner or operator of an asbestos abatement or renovation project covered by R307-801 whose act or process produces ACWM.

"Working Day" means weekdays, Monday through Friday, including holidays.

R307-801-4. Adoption and Incorporation of 40 CFR 763 Subpart E.

(1) The provisions of 40 CFR 763 Subpart E, including appendices, effective as of the date referenced in R307-101-3, are hereby adopted and incorporated by reference.

(2) Implementation of the provisions of 40 CFR Part 763, Subpart E, except for the Model Accreditation Plan, shall be limited to those provisions for which the EPA has waived its requirements in accordance with 40 CFR 763.98, Waiver; delegation to State, as published at 52 FR 41826, (October 30, 1987).

R307-801-5. Company Certification.

(1) All persons shall operate under:

(a) An asbestos company certification before contracting for hire, at a regulated facility, to conduct asbestos inspections, create management plans, create project designs, or conduct asbestos abatement projects, or

(b) Either an asbestos renovation company certification or asbestos company certification before contracting for hire to conduct asbestos abatement or renovation projects at a regulated facility.

(2) To obtain an asbestos company certification or an asbestos renovation company certification, all persons shall submit a properly completed application for certification on a form provided by the director and pay the appropriate fee.

(3) Unless revoked or suspended, an asbestos company certification or an asbestos renovation company certification shall remain in effect until the expiration date provided by the director.

R307-801-6. Individual Certification.

(1) All persons shall have an individual certification to conduct asbestos inspections, create management plans, create project designs, conduct asbestos renovation projects, or conduct asbestos abatement projects at a regulated facility.

(2) To obtain certification as an asbestos abatement worker, asbestos abatement supervisor, inspector, project designer, renovator, or management planner, each person shall:

(a) Provide personal identifying information;

(b) Pay the appropriate fee;

(c) Complete the appropriate form or forms provided by the director;

(d) Provide certificates of initial and current refresher training, if applicable, that demonstrates accreditation in the appropriate discipline. Certificates from courses approved by the director, courses approved in a state that has an accreditation program that meets the TSCA Title II Appendix C Model Accreditation Plan (MAP), or courses that are approved by EPA under TSCA Title II are acceptable unless the director has determined that the course does not meet the requirements of TSCA accreditation training required by R307-801; and

(e) Complete a new initial training course as required by the AHERA MAP, or for the renovator certification, R307-801, if there is a period of more than one year from the previous initial or refresher training certificate expiration date.

(3) Duration and Renewal of Certification.

(a) Unless revoked or suspended, a certification shall remain in effect until the expiration date of the current certificate of TSCA accreditation for the specific discipline.

(b) To renew certification, the individual shall:

(i) Submit a properly completed application for renewal on a form provided by the director;

(ii) Submit a current certificate of TSCA accreditation, or for the renovator certification, a training certificate from a renovator course accredited by the director, for initial or refresher training in the appropriate discipline; and

(iii) Pay the appropriate fee.

R307-801-7. Denial and Cause for Suspension and Revocation of Company and Individual Certifications.

(1) An application for certification may be denied if the individual, applicant company, or any principal officer of the applicant company has a documented history of non-compliance with the requirements, procedures, or standards established by R307-801, R307-214-1, which incorporates the Asbestos NESHAP, AHERA, or with the requirements of any other entity regulating asbestos activities and training programs.

(2) The director may revoke or suspend any certification based upon documented violations of any requirement of R307-801, AHERA, or the Asbestos NESHAP, including but not limited to:

(a) Falsifying or knowingly omitting information in any written submittal required by those regulations;

(b) Permitting the duplication or use of a certificate of TSCA accreditation for the purpose of preparing a falsified written submittal; or

(c) Repeated work practice violations.

R307-801-8. Approval of Training Courses.

(1) To obtain approval of a training course, the course provider shall provide a written application to the director that includes:

(a) The name, address, telephone number, and institutional affiliation of the person sponsoring the course;

(b) The course curriculum;

(c) A letter that clearly indicates how the course meets the Model Accreditation Plan (MAP) and R307-801 requirements for length of training in hours, amount and type of hands-on training, examinations (including length, format, example of examination or questions, and passing scores), and topics covered in the course;

(d) A copy of all course materials, including student manuals, instructor notebooks, handouts, etc.;

(e) The names and qualifications of all course instructors, including all academic credentials and field experience in asbestos abatement projects, inspections, project designs, management planning, or renovation projects;

(f) An example of numbered certificates issued to students who attend the course and pass the examination. The certificate shall include a unique certificate number; the name of the student; the name of the course completed; the dates of the course and the examination; an expiration date one year from the date the student completed the course and examination, or for the purposes of the renovator course, a progressive lengthening of the refresher training schedule of one year after the initial training, three years after the first refresher training, and five years after the second refresher training and all subsequent refresher training courses; the name, address, and telephone number of the training provider that issued the certificate; and a statement that the person receiving the certificate has completed the requisite training for TSCA or director accreditation;

(g) A written commitment from the training provider to teach the submitted training course(s) in Utah on a regular basis; and

(h) Payment of the appropriate fee.

(2) To maintain approval of a training course, the course provider shall:

(a) Provide training that meets the requirements of R307-801 and the MAP;

(b) Provide the director with the names, government-issued picture identification card number, and certificate numbers of all persons successfully completing the course within 30 working days of successful completion;

(c) Keep the records specified for training providers in the MAP for three years;

(d) Permit the director or authorized representative to attend, evaluate, and monitor any training course without receiving advance notice from the director and without charge to the director; and

(e) Notify the director of any new course instructor ten working days prior to the day the new instructor presents or teaches any course for Renovator or TSCA Accreditation purposes. The training notification form shall include:

(i) The name and qualifications of each course instructor, including appropriate academic credentials and field experience in asbestos abatement projects, inspections, management plans, project designs, or renovations; and

(ii) A list of the course(s) or specific topics that will be taught by the instructor.

(f) Submit the initial or refresher course materials required by R307-801-8(1) to the director for course re-accreditation in a time period not to exceed four years.

(3) All course providers that provide an AHERA or Renovator training course or refresher course in the state of Utah shall:

(a) Notify the director of the location, date, and time of the course at least ten working days before the first day of the course;

(b) Update the training notification form as soon as possible before, but no later than one day before the original course date if the course is rescheduled or canceled before the course is held; and

(c) Allow the director or authorized representative to conduct an audit of any course provided to determine whether the course provider meets the requirements of the MAP and of R307-801.

(4) Renovator Certification Course. The renovator certification course shall be a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities, and shall include an examination of at least 25 questions that the student shall pass with a 70% or greater proficiency rate. Instruction in the topics described in R307-801-8(4)(c), (d), and (e) shall be included in the hands-on portion of the course. The minimum curriculum requirements for the renovator certification course shall adequately address the following topics:

(a) The physical characteristics of asbestos and asbestos-containing materials, including identification of asbestos, aerodynamic characteristics, typical uses, physical appearance,

a review of hazard assessment considerations, and a summary of renovation project control options;

(b) Potential health effects related to asbestos exposure, including the nature of asbestos-related diseases, routes of exposure, dose-response relationships and the lack of a safe exposure level, synergism between cigarette smoking and asbestos exposure, and latency period for diseases;

(c) Personal protective equipment, including selection of respirator and personal protective clothing, and handling of non-disposable clothing;

(d) State-of-the-art work practices, including proper work practices for renovation projects, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems, positioning of warning signs, lock-out of electrical and ventilation systems, proper working techniques for minimizing fiber release, use of wet methods, use of negative pressure exhaust ventilation equipment, use of HEPA vacuums, and proper clean-up and disposal procedures and state-of-the-art work practices for removal, encapsulation, enclosure, and repair of ACM, emergency procedures for unplanned releases, potential exposure situations, transport and disposal procedures, and recommended and prohibited work practices. New renovation project techniques and methodologies may be discussed;

(e) Personal hygiene, including entry and exit procedures for the work area, methods of decontamination, avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area, and methods to limit exposures to family members;

(f) Medical monitoring, including OSHA requirements for physical examinations, including a pulmonary function test, chest x-rays, and a medical history for each employee;

(g) Relevant federal and state regulatory requirements, procedures, and standards, including:

(i) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection (29 CFR 1910.134);

(ii) OSHA Asbestos Construction Standard (29 CFR 1926.1101); and

(iii) UAC R307-801 Utah Asbestos Rule.

(h) Recordkeeping and notification requirements for renovation projects including records and project notification forms required by state regulations and records recommended for legal and insurance purposes;

(i) Supervisory techniques for renovation projects, including supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices; and

(j) Course review, including a review of key aspects of the training course.

(5) Renovator Recertification Course. The renovator recertification course shall be a minimum of four hours, shall adequately address changes in the federal regulations, state administrative rules, state-of-the-art developments, appropriate work practices, employee personal protective equipment, recordkeeping, and notification requirements for renovation projects, and shall include a course review.

R307-801-9. Asbestos Abatement, Renovation, and Demolition Projects: Requirement to Inspect.

(1) Applicability. Contractors are required to have an asbestos inspection performed by a Utah certified asbestos inspector working for a Utah certified asbestos company. The asbestos inspection report shall be on-site and available when regulated work activities are being performed. Owners of residential structures including condominium owners of four units or less, not otherwise subject to the Asbestos NESHAP, are not required to perform asbestos inspections. Owners of a condominium complex of more than four units are subject to R307-801, may also be subject to the Asbestos NESHAP, but are required to perform asbestos inspections.

(2) Except as described in R307-801-9(1) and 9(3), the owner and operator shall ensure that the regulated facility to be demolished, abated, or renovated is thoroughly inspected for asbestos-containing material by an inspector certified under the provisions of R307-801-6. An asbestos inspection report shall be generated according to the provisions of R307-801-10 and completed prior to the start of the asbestos abatement, renovation, or demolition project if materials required to be identified in R307-801-10(3) will be disturbed during that project. The operator shall make the asbestos inspection report available on-site to all persons who have access to the site for the duration of the renovation, abatement, or demolition project, and to the director or authorized representative upon request.

(3) If the regulated facility has been ordered to be demolished because it is found by a government official to be structurally unsound and in danger of imminent collapse or a public health hazard, the operator may demolish the regulated facility without having the regulated facility inspected for asbestos. If no asbestos inspection is conducted, the operator shall:

(a) Ensure that all resulting demolition project debris is disposed of as asbestos-containing waste material (ACWM) according to R307-801-14; or

(b) reduce the amount of ACWM by segregating the ACWM from non-ACWM debris under the direction of an asbestos inspector certified according to R307-801-6 working for a company certified according to R307-801-5 and clean and encapsulate non-porous debris as non-ACWM by asbestos abatement supervisors or asbestos abatement workers who are certified according to R307-801-6 and working for a company certified according to R307-801-5.

(4) If an asbestos inspection report older than three years will be used for a regulated asbestos renovation, abatement, or demolition activity, the asbestos inspection report shall be reviewed and updated, as necessary, by an inspector who is certified according to R307-801-6 and working for a company certified according to R307-801-5. The report does not need to be reviewed until a time that it will be used for regulatory purposes such as an abatement, renovation, or demolition activity. If the inspection report is still accurate, then the inspector shall provide written documentation stating that the inspection report is still accurate. If the inspection report is not accurate, then the inspector shall provide written documentation, including new sample results, if necessary, such that the inspection report meets all requirements of R307-801.

R307-801-10. Asbestos Abatement, Renovation, and Demolition Projects: Asbestos Inspection Procedures.

Asbestos inspectors shall use the following procedures when conducting an asbestos inspection of facilities to be abated, demolished, or renovated:

(1) Determine the scope of the abatement, demolition, or renovation project by identifying which parts and how the facility will be abated, demolished, or renovated (e.g. conventional demolition methods, fire training, etc.).

(2) Inspect the affected facility or part of the facility where the abatement, demolition, or renovation project will occur.

(3) Identify all accessible suspect asbestos-containing material (ACM) in the affected facility or part of the facility where the abatement, demolition, or renovation project will occur. Residential facilities built on or after January 1, 1981, are only required to identify all accessible sprayed-on or painted-on ceiling treatment that contained or may contain asbestos fiber, asbestos cement siding or roofing materials, resilient flooring products including vinyl asbestos tile, sheet vinyl products, resilient flooring backing material, whether attached or unattached, and mastic, thermal-system insulation or tape on a duct or furnace, or vermiculite type insulation

materials in the affected facility or part of the facility where the abatement, demolition, or renovation project will occur.

(4) Follow the sampling protocol in 40 CFR 763.86 (Asbestos-Containing Materials in Schools) or a sampling method approved by the director to demonstrate that suspect ACM required to be identified by R307-801-10(3) does not contain asbestos.

(5) Asbestos samples are not required to be collected and analyzed if the certified inspector assumes that all unsampled suspect ACM required to be identified by R307-801-10(3) contains asbestos and is ACM; and

(6) Complete an asbestos inspection report containing all of the following information in a format approved by the director:

(a) A description of the affected area and a description of the scope of activities as described in R307-801-10(1);

(b) A list of all suspect ACM required to be identified by R307-801-10(3) in the affected area. Include a description of the suspect ACM sufficient to be able to identify the material. For each suspect material required to be identified by R307-801-10(3), provide the following information:

(i) The amount of suspect ACM required to be identified by R307-801-10(3) in linear feet, square feet, or cubic feet;

(ii) A clear description of the distribution of the suspect ACM required to be identified by R307-801-10(3) in the affected area;

(iii) A statement of whether the material was assumed to contain asbestos, sampled and demonstrated to contain asbestos, or sampled and demonstrated to not contain asbestos; and

(iv) A written determination or table of whether the material is regulated asbestos-containing material (RACM), Category I non-friable ACM, Category II non-friable ACM that may or will become friable when subjected to the proposed abatement, renovation, or demolition project activities, or other suspect ACM that has either not been tested and assumed to contain asbestos, or has been tested by an accredited asbestos laboratory and found not to contain asbestos greater than 1%.

(c) A list of all asbestos bulk samples required to be identified from suspect ACM by R307-801-10(3) in the affected area, including the following information for each sample:

(i) Which suspect ACM required to be identified by R307-801-10(3) the sample represents;

(ii) A clear description of each sample location;

(iii) The types of analyses performed on the sample;

(iv) The amounts of each type of asbestos in the sample as indicated by the analytical results.

(d) A list of potential locations of suspect ACM required to be identified by R307-801-10(3) that were not accessible to inspect and that may be part of the affected area; and

(e) A list of all the asbestos inspector names, company names, and certification numbers.

(7) Floor plans or architectural drawings and similar representations may be used to identify the location of suspect ACM or samples required to be identified by R307-801-10(3).

(8) Analysis of samples shall be performed by:

(a) Persons or laboratories accredited by a nationally recognized testing program such as the National Voluntary Laboratory Accreditation Program (NVLAP), or

(b) Persons or laboratories that have been rated overall proficient by demonstrating passing scores for at least two of the last three consecutive rounds out of the four annual rounds of the Bulk Asbestos Proficiency Analytical Testing program administered by the American Industrial Hygiene Association (AIHA) or an equivalent nationally-recognized interlaboratory comparison program.

R307-801-11. Asbestos Abatement, Renovation, and Demolition Projects: Notification and Asbestos Removal Requirements.

(1) Demolition Projects.

(a) The operator shall submit a properly completed demolition notification form at least ten working days before the start of a demolition project along with payment of the appropriate fee. The operator cannot start the demolition project until all regulated asbestos-containing material (RACM) has been properly removed.

(b) If any regulated facility is to be demolished by intentional burning, the operator, in addition to the demolition notification form specified in R307-801-11(1)(a), shall ensure that all ACM, including Category I non-friable asbestos-containing material (ACM), Category II non-friable ACM, and RACM is removed from the regulated facility before burning.

(c) If the regulated facility has been ordered to be demolished by a government official because it is found to be structurally unsound and in danger of imminent collapse or a public health hazard, the operator shall submit a demolition project notification form, with a copy of the order signed by the appropriate government official, as soon as possible before, but no later than, the next working day after the demolition project begins.

(2) Asbestos Abatement and Renovation Projects.

(a) If the amount of RACM that would be disturbed or rendered inaccessible by the asbestos abatement or renovation project is the SSSD amount, then no additional requirements are necessary prior to general building remodeling activities.

(b) If the amount of RACM that would be disturbed or rendered inaccessible by the asbestos abatement or renovation project is greater than the SSSD amount, but less than the NESHAP amount, then the operator shall:

(i) Submit an asbestos abatement project notification form at least one working day before asbestos removal begins as described in R307-801-12, unless the removal was properly included in an annual asbestos notification form submitted pursuant to R307-801-11(2)(e);

(ii) Remove RACM according to asbestos work practices of R307-801-13, the certification requirements of R307-801-5 and 6, and the disposal requirements of R307-801-14 before performing general building remodeling activities.

(c) If the amount of RACM that would be disturbed or rendered inaccessible by the asbestos abatement project is greater than or equal to the NESHAP amount, then the operator shall:

(i) Submit an asbestos abatement project notification form along with payment of the appropriate fee at least ten working days before asbestos removal begins as described in R307-801-12;

(ii) Remove RACM according to the asbestos work practices of R307-801-13, the certification requirements of R307-801-5 and 6, and the disposal requirements of R307-801-14 before performing general building remodeling activities.

(d) If the asbestos abatement or renovation project is an emergency asbestos abatement or renovation project, then the notification form shall be submitted as soon as possible before, but no later than, the next working day after the emergency asbestos abatement or renovation project begins.

(e) The operator shall submit an annual asbestos notification form along with payment of the appropriate fee according to the requirements of 40 CFR 61.145(a)(4)(iii) no later than ten working days before the first day of January of the year during which the work is to be performed in the following circumstances:

(i) The asbestos abatement projects are unplanned operation and maintenance activities;

(ii) The asbestos abatement projects are less than NESHAP-sized; and

(iii) The total amount of asbestos to be disturbed in a single NESHAP facility during these asbestos abatement projects is expected to exceed the NESHAP amount in a

calendar year.

(3) Owners and operators of general building remodeling activities are not required to submit an asbestos abatement project or renovation notification form to the director that do not disturb suspect asbestos containing materials, do not disturb building materials found to contain RACM by an inspector who is certified according to R307-801-6, or do not disturb materials that will become RACM as part of the general building remodeling activities.

(4) For notification purposes, asbestos abatement, renovation, or demolition projects shall be no longer than one year in duration.

(5) Revise the notification form, as necessary, when any information on the original notification or any subsequent notification forms changes.

R307-801-12. Asbestos Abatement, Renovation, and Demolition Projects: Notification Procedures and Contents.

(1) All notification forms required by R307-801-11 shall be submitted in writing on the appropriate form provided by the director and shall be postmarked or received by the director in accordance with R307-801-11, or shall be submitted using the Division of Air Quality electronic notification system and received by the director in accordance with R307-801-11. The type of notification and whether the notification is original or revised shall be indicated.

(2) If the notification is an original demolition project notification form, an original asbestos abatement project notification form for a NESHAP-sized asbestos abatement project, or an original asbestos annual notification form, the written notice shall be sent with an original signature by U.S. Postal Service, commercial delivery service, or hand delivery, or with an electronic signature if submitted using the Division of Air Quality electronic notification system. If the U.S. Postal Service is used, the submission date is the postmark date. If other service or hand delivery is used, the submission date is the date that the document is received by the director. If the Division of Air Quality electronic notification system is used, the submission date is the date that the notification is received by the director.

(3) An original asbestos notification form for a less than NESHAP-sized asbestos abatement or renovation project or any revised notification may be submitted by any of the methods in R307-801-12(2), or by facsimile, by the date specified in R307-801-11. The sender shall ensure that the fax is legible.

(4) All original notification forms shall contain the following information:

(a) The name, address, and telephone number of the owner of the regulated facility, the general contractor, the demolition contractor, and the asbestos renovation or abatement contractor, if applicable;

(b) Whether the operation is an asbestos abatement, demolition, or a renovation project;

(c) A description of the regulated facility that includes the total size of the structure or structures in square feet, including the square footage of all floors in a multilevel or multi-floor structure, the age, the future, present, and prior uses of the facility, including any additional regulated structures affected by the project;

(d) The names and certification numbers of the inspectors and companies;

(e) The procedures, including analytical methods, used to inspect for the presence of asbestos-containing material (ACM);

(f) The location and address, including building number or name and floor or room number, street address, city, county, state, and zip code of each regulated facility being demolished or renovated;

(g) A description of procedures for handling the discovery of unexpected ACM, Category I non-friable ACM, or Category II non-friable ACM that has or will become friable or regulated;

(h) A description of planned asbestos abatement, demolition, or renovation project work, including the asbestos abatement, demolition, and renovation project techniques to be used and a description of the affected regulated facility components or structural members; and

(i) If the project has phases, then provide the date and times of each phase and the location and address of all regulated facilities to be abated, demolished, or renovated.

(5) In addition to the information in R307-801-12(4), an original demolition project notification form shall contain the following information:

(a) An estimate of the amount of Category I non-friable ACM and non-regulated ACM that will remain in the building during the demolition project;

(b) The start and stop dates of the demolition project;

(c) The days that the demolition project will be conducted; and

(d) If the regulated facility will be demolished under an order of a government official, the name, title, government agency, and authority of the government official ordering the demolition project, the date the order was issued, and the date the demolition project was ordered to commence. A copy of the order shall be attached to the demolition project notification form.

(6) In addition to the information required in R307-801-12(4) and (5), an original demolition project notification form for phased demolition projects shall include:

(a) The start and stop dates for the entire phased project; and

(b) The start and stop dates for each phase of the project.

(7) In addition to the information required in R307-801-12(4), (5), and (6), an original asbestos abatement project notification form shall include:

(a) An estimate of the amount of ACM to be stripped, including which units of measure were used;

(b) The start and stop dates for asbestos abatement project preparation;

(c) The times of day for every day that asbestos abatement project will be conducted;

(d) A description of work practices and engineering controls to be used to prevent emissions of asbestos at the demolition or asbestos abatement project work site;

(e) The name and location of the waste disposal site where the ACWM will be disposed, including the name and telephone number of the waste disposal site contact;

(f) The name, address, contact person, and telephone number of the waste transporters; and

(g) The name, contact person, and telephone number of the waste generator.

(8) If an emergency asbestos abatement or renovation project will be performed, then the notification form shall include the date and hour the emergency occurred, a description of the event and an explanation of how the event has caused unsafe conditions or would cause equipment damage or unreasonable financial burden.

(9) In addition to the information in R307-801-12(4) and (5), an original asbestos abatement project annual notification form shall contain the following information:

(a) An estimate of the approximate amount of ACM to be stripped, including which units of measure were used, if known;

(b) The start and stop dates of asbestos abatement project work covered by the annual notification, if known;

(c) A description of work practices and engineering controls to be used to prevent emissions of asbestos at the asbestos abatement project work site;

(d) The name and location of the waste disposal site where the asbestos-containing waste material (ACWM) will be disposed, including the name and telephone number of the

waste disposal site contact;

(e) The name, address, contact person, and telephone number of the waste transporters; and

(f) The name, contact person, and telephone number of the waste generator.

(10) A revised notification form shall contain the following information:

(a) The name, address, and telephone number of the owner of the regulated facility, and any demolition, renovation, or asbestos abatement project contractor or contractors working on the project;

(b) Whether the operation is an asbestos abatement, a demolition, or a renovation project;

(c) The date that the original notification form was submitted;

(d) The applicable original start and stop dates for the asbestos abatement, renovation, or demolition project;

(e) The revised start and stop dates and working hours, if applicable, for asbestos abatement, renovation, or demolition projects, for the entire project or for any phase of the project;

(f) The changes in the amount of asbestos to be removed during the project if the asbestos removal amount increases or decreases by more than 20%;

(g) If the previously reported area of the building or buildings to be demolished was inaccurate and needs to be changed, then the demolition notification form shall be revised to include the building area change and any additional fee shall be paid to the Utah Division of Air Quality; and

(h) Any changes to the original or subsequently revised notification form or forms. Describe all changes made to the revised notification form in the comments section of that form.

(11) If the asbestos removal amount is increased in the revised notification form, then the appropriate fee shall be paid to the Utah Division of Air Quality.

(12) If any project phase or an entire NESHAP-sized asbestos abatement, renovation, or demolition project that requires a notification form under R307-801-12(4) will commence on a date or work times other than the date and work times submitted in the original or the most recently revised notification form, the director shall be notified of the new start date and work times by the following deadlines:

(a) If the new start date and work times are later than the original start date and work times, then notice by telephone, fax, or electronic means shall be given as soon as possible before the start date and a revised notification form shall be submitted in accordance with R307-801-12(10) as soon as possible before, but no later than, the original start date. If the written notification form is received by the director no later than the day before the original start date and work times, no notice by telephone is required.

(b) If the new start date is earlier than the original start date, submit a written notice in accordance with R307-801-12(10) at least ten working days before beginning the project.

(c) In no event shall an asbestos abatement, renovation, or demolition project covered by R307-801-12 begin on a date other than the new start date submitted in the revised written notice.

R307-801-13. Asbestos Abatement and Renovation Project: Work Practices.

(1) An asbestos abatement supervisor who has been certified under R307-801-6 shall be on-site during asbestos abatement project setup, asbestos removal, stripping, cleaning and dismantling of the project, and other handling of uncontainerized regulated asbestos-containing material (RACM).

(2) All persons handling any amount of uncontainerized RACM during a regulated project shall be certified as an asbestos abatement worker or an asbestos abatement supervisor certified under R307-801-6.

(3) Persons performing an asbestos abatement or renovation project at a regulated facility shall follow the work practices in R307-801-13. Where the work practices in R307-801-13(3) and (4) are required, wrap and cut, open top catch bags, glove bags, and mini-enclosures may be used in combination with those work practices.

(a) Adequately wet regulated asbestos-containing material (RACM) with amended water before exposing or disturbing it, except when temperatures are continuously below freezing (32 degrees F.), and when all requirements in 40 CFR 61.145(c)(7) are met.

(b) Install barriers and post warning signs to prevent access to the work area. Warning signs shall conform to the specifications of 29 CFR 1926.1101(k)(7).

(c) Keep RACM adequately wet until it is containerized and disposed of in accordance with R307-801-14.

(d) Ensure that RACM that is stripped or removed is promptly containerized.

(e) Prevent visible particulate matter and uncontainerized asbestos-containing debris and waste originating in the work area from being released outside of the negative pressure enclosure or designated work area.

(f) Filter all waste water to five microns before discharging it to a sanitary sewer.

(g) Decontaminate the outside of all persons, equipment, and waste bags so that no visible residue is observed before leaving the work area.

(h) Apply encapsulant to RACM that is exposed but not removed during stripping.

(i) Clean the work area, drop cloths, and other interior surfaces of the enclosure using a high-efficiency particulate air (HEPA) vacuum and wet cleaning techniques until there is no visible residue before dismantling barriers.

(j) After cleaning and before dismantling enclosure barriers, mist all surfaces inside of the enclosure with a penetrating encapsulant designed for that purpose.

(k) Handle and dispose of friable asbestos-containing material (ACM) and RACM according to the disposal provisions of R307-801-14.

(4) All operators of NESHAP-sized asbestos abatement projects shall install a negative pressure enclosure using the following work practices.

(a) All openings to the work area shall be covered with at least one layer of six mil or thicker polyethylene sheeting sealed with duct tape or an equivalent barrier to air flow.

(b) If RACM debris is present in the proposed work area prior to the start of a NESHAP-sized asbestos abatement project, the site shall be prepared by removing the debris using the work practice requirements of R307-801-13 and disposal requirements of R307-801-14. If the total amount of loose visible RACM debris throughout the entire work area is the SSSD amount, then site preparation may begin after the notification form has been submitted and before the end of the ten working day waiting period.

(c) A decontamination unit constructed to the specifications of R307-801-13(4)(h) shall be attached to the containment prior to disturbing RACM or commencing a NESHAP-sized asbestos abatement project, and all persons shall enter and leave the negative pressure enclosure or work area only through the decontamination unit except in a life threatening emergency situation.

(d) All persons subject to R307-801 shall shower before entering the clean-room of the decontamination unit when exiting the enclosure and shall follow all procedures required by 29 CFR 1926.1101(j)(1)(ii).

(e) No materials may be removed from the enclosure or brought into the enclosure through any opening other than a waste load-out or a decontamination unit.

(f) The negative pressure enclosure of the work area shall be constructed with the following specifications:

(i) Apply at least two layers of six mil or thicker polyethylene sheeting or its equivalent to the floor extending at least one foot up every wall and seal in place with duct tape or its equivalent;

(ii) Apply at least two layers of four mil or thicker polyethylene sheeting or its equivalent to the walls without locating seams in wall or floor corners;

(iii) Seal all seams with duct tape or its equivalent;

(iv) Maintain the integrity of all enclosure barriers; and

(v) Where a wall or floor will be removed as part of the NESHAP-sized asbestos abatement project, polyethylene sheeting need not be applied to that regulated facility component or structural member.

(g) View ports shall be installed in the enclosure or barriers where feasible, and view ports shall be:

(i) At least one foot square;

(ii) Made of clear material that is impermeable to the passage of air, such as an acrylic sheet;

(iii) Positioned so as to maximize the view of the inside of the enclosure from a position outside the enclosure; and

(iv) Accessible to a person outside of the enclosure.

(h) A decontamination unit shall be constructed according to the following specifications:

(i) The unit shall be attached to the enclosure or work area;

(ii) The decontamination unit shall consist of at least three chambers and meet all regulatory requirements of 29 CFR 1926.1101(j)(1)(i);

(iii) The clean room, which is the chamber that opens to the outside, shall be no less than three feet wide by three feet long by six feet high, when feasible;

(iv) The shower room, which is the chamber between the clean and dirty rooms, shall have hot and cold or warm running water and be no less than three feet wide by three feet long by six feet high, when feasible;

(v) The dirty room, which is the chamber that opens to the negative pressure enclosure or the designated work area, shall be no less than three feet wide by three feet long by six feet high, when feasible;

(vi) The dirty room shall be provided with an accessible waste bag at any time that asbestos abatement project is being performed.

(i) A separate waste load-out following the specifications below may be attached to the enclosure for removal of decontaminated waste containers and decontaminated or wrapped tools from the enclosure.

(i) The waste load-out shall consist of at least one chamber constructed of six mil or thicker polyethylene walls and six mil or thicker polyethylene flaps or the equivalent on the outside and inside entrances;

(ii) The waste load-out chamber shall be at least three feet long, three feet high, and three feet wide; and

(iii) The waste load-out supplies shall be sufficient to decontaminate bags, and shall include a water supply with a filtered drain, clean rags, disposable rags or wipes, and clean bags.

(j) Negative air pressure and flow shall be established and maintained within the enclosure by:

(i) Maintaining at least four air changes per hour in the enclosure;

(ii) Routing the exhaust from HEPA filtered ventilation units to the outside of the regulated facility whenever possible;

(iii) Maintaining a minimum of 0.02 column inches of water pressure differential relative to outside pressure; and

(iv) Maintaining a monitoring device to measure the negative pressure in the enclosure.

(5) In lieu of two layers of polyethylene on the walls and the floors as required by R307-801-13(4)(f)(i) and (ii), the following work practices and controls may be used only under the circumstances described below:

(a) When a pipe insulation removal asbestos abatement project is conducted the following may be used:

(i) Drop cloths extending a distance at least equivalent to the height of the RACM around all RACM to be removed, or extended to a wall and attached with duct tape or equivalent;

(ii) Either the glove bag or wrap and cut methods may be used; and

(iii) RACM shall be adequately wet before wrapping.

(b) When the RACM is scattered ACM and is found in small patches, such as isolated pipe fittings, the following procedures may be used:

(i) Glove bags, mini-enclosures as described in R307-801-13(7)(c), or wrap and cut methods with drop cloths large enough to capture all RACM fragments that fall from the work area may be used.

(ii) If all asbestos disturbance is limited to the inside of negative pressure glove bags or a mini-enclosure, then non-glove bag or non-mini-enclosure building openings need not be sealed and negative pressure need not be maintained in the space outside of the glove bags or mini-enclosure during the asbestos removal operation.

(iii) A remote decontamination unit may be used as described in R307-801-13(7)(d) only if an attached decontamination unit is not feasible.

(c) When a preformed RACM pipe insulation asbestos abatement project in a crawl space or pipe chase less than six feet high or less than three feet wide is conducted, the following may be used:

(i) Drop cloths extending a distance at least six feet around all preformed RACM pipe insulation to be removed or extended to a wall and attached with duct tape or equivalent; or

(ii) The open top catch bag method.

(6) During outdoor asbestos abatement projects, the work practices of R307-801-13 shall be followed with the following modifications:

(a) Negative pressure need not be maintained if there is not an enclosure;

(b) Six mil polyethylene drop cloth, or equivalent, large enough to capture all RACM fragments that fall from the work area shall be used; and

(c) A remote decontamination unit as described in R307-801-13(7)(d) may be used.

(7) Special work practices.

(a) If the wrap and cut method is used:

(i) The regulated facility component shall be cut at least six inches from any RACM on that component;

(ii) If asbestos will be removed from the regulated facility component to accommodate cutting, the asbestos removal shall be performed using a single glove bag for each cut, and no RACM shall be disturbed outside of a glove bag;

(iii) The wrapping shall be leak-tight and shall consist of two layers of six mil polyethylene sheeting, each individually sealed with duct tape, and all RACM between the cuts shall be sealed inside wrap; and

(iv) The wrapping shall remain intact and leak-tight throughout the removal and disposal process.

(b) If the open top catch bag method is used:

(i) The material to be removed can only be preformed RACM pipe insulation, and it shall be located in a crawl space or a pipe chase less than six feet high or less than three feet wide;

(ii) Asbestos waste bags that are leak-tight and strong enough to hold contents securely shall be used;

(iii) The bag shall be placed underneath the stripping operation to minimize ACM falling onto the drop cloth;

(iv) All material stripped from the regulated facility component shall be placed in the bag;

(v) One asbestos abatement worker shall hold the bag and another asbestos abatement worker shall strip the ACM into the bag; and

(vi) A drop cloth extending a distance at least six feet around all preformed RACM pipe insulation to be removed, or extended to a wall and attached with duct tape or equivalent shall be used.

(c) If glove bags are used, they shall be under negative pressure, and the procedures required by 29 CFR 1926.1101(g)(5)(iii) shall be followed.

(d) A remote decontamination unit may be used under the conditions set forth in R307-801-13(5)(b) and (6), when there is an area insufficient to construct a connected decontamination unit, or when approved by the director. The remote decontamination unit shall meet all construction standards in R307-801-13(4)(h) and shall include:

(i) Outerwear shall be HEPA vacuumed or removed, and additional clean protective outerwear shall be put on;

(ii) Either polyethylene sheeting shall be placed on the path to the decontamination unit and the path shall be blocked or taped off to prevent public access, or asbestos abatement workers shall be conveyed to the remote decontamination unit in a vehicle that has been lined with two layers of six mil or thicker polyethylene sheeting or its equivalent; and

(iii) The polyethylene path or vehicle liner shall be removed at the end of the project, and disposed of as ACWM.

(e) Mini-enclosures, when used under approved conditions, shall conform to the requirements of 29 CFR 1926.1101(g)(5)(vi).

(8) For asbestos-containing mastic removal projects using mechanical means, such as a power buffer, to loosen or remove mastic from the floor, in lieu of two layers of polyethylene sheeting on the walls, splash guards of six mil or thicker polyethylene sheeting shall be placed from the floor level a minimum of three feet up the walls.

(9) Persons who improperly disturb more than the SSSD amount of asbestos-containing material and contaminate an area with friable asbestos shall:

(a) Have the emergency clean-up portion of the project, including any portions not contained within a regulated facility or in common use areas that cannot be isolated, performed as soon as possible by a company or companies certified according to R307-801-5, and, asbestos abatement supervisor(s), and asbestos abatement worker(s) certified according to R307-801-6.

(b) Have an asbestos clean-up plan designed by a Utah certified asbestos project designer for the non-emergency portion of the project and have the asbestos clean-up plan submitted to the director for approval. An asbestos clean-up plan is not required when the disturbance results from a natural disaster, fire, or flooding.

(c) Submit the project notification form required by R307-801-11 and 12 to the director for acceptance no later than the next working day after the disturbance occurs or is discovered. For fee calculation purposes, the size of the emergency clean-up project is the area that has been contaminated or potentially contaminated by the disturbance and not the amount of asbestos-containing material disturbed.

(d) Notify the director of project completion by telephone, fax, or electronic means by the day of completion and before leaving the site.

(10) For asbestos abatement, renovation, or demolition projects that remove or otherwise disturb loose-fill vermiculite type insulation materials assumed to be regulated asbestos-containing material or found to contain greater than 1% regulated asbestiform fibers, then the material being removed is considered regulated asbestos-containing material and shall meet all the appropriate regulatory requirements of R307-801.

(a) Regulated vermiculite shall be removed to the maximum extent possible, or by following a work practice that has been established by the director, or by an alternative work practice as approved by the director.

R307-801-14. Disposal and Handling of Asbestos Waste.

(1) Owners and operators of regulated facilities shall containerize asbestos-containing waste material (ACWM) while adequately wet.

(2) ACWM containers shall be leak-tight and strong enough to hold contents securely and be labeled with an OSHA warning label found in 29 CFR 1926.1101(k)(8).

(3) Containers shall be labeled with the waste generator's and contractor's names, addresses, and telephone numbers before they are removed from the asbestos renovation or abatement work area.

(4) Containerized regulated asbestos-containing material (RACM) shall be disposed of at a landfill which complies with 40 CFR 61.150.

(5) The waste shipment record shall include a list of items and the amount of ACWM being shipped. The waste generator originates and signs this document.

(6) Owners and operators of regulated facilities where an asbestos abatement or renovation project has been performed shall report in writing to the director if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 working days from the date the waste was accepted by the initial transporter. Include in the report the following information:

(a) A copy of the waste shipment record for which a confirmation of delivery was not received; and

(b) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

R307-801-15. Records.

(1) Certified asbestos abatement or renovation companies shall maintain records of all asbestos abatement or renovation projects that they perform at regulated facilities and shall make these records available to the director or authorized representative upon request. The records shall be retained for at least five years. Maintained records shall include the following:

(a) Names and certification numbers of the asbestos abatement workers, asbestos abatement supervisors, or renovators who performed the asbestos abatement or renovation project;

(b) Location and description of the asbestos abatement or renovation project and amount of friable asbestos-containing material (ACM) removed;

(c) Start and stop dates of the asbestos abatement or renovation project;

(d) Summary of the procedures used to comply with applicable requirements including copies of all notification forms;

(e) Waste shipment records maintained in accordance with 40 CFR Part 61, Subpart M; and

(f) Asbestos inspection reports associated with the asbestos abatement or renovation project.

(2) All persons subject to the inspection requirements of R307-801-9 shall maintain copies of asbestos inspection reports for at least one year after asbestos abatement, renovation, or demolition projects have ceased, and shall make these reports available to the director or authorized representative upon request.

R307-801-16. Certified Renovator Work Practices.

(1) Certified renovators are responsible for ensuring compliance with R307-801 at all renovation projects at regulated facilities to which they are assigned.

(2) Certified renovators working at regulated facilities

shall:

(a) Perform all of the tasks described in R307-801-13(3) and shall either perform or direct workers who perform all tasks described in R307-801-13(3);

(b) Provide training to workers on the work practices required by R307-801-13(3) that will be used when performing renovation projects;

(c) Be physically present at the work site when all work activities required by R307-801-13(3)(b) are posted, while the work area containment required by R307-801-13(3)(b) is being established, and while the work area cleaning required by R307-801-13(3)(i) is performed;

(d) Be on-site and direct work being performed by other individuals to ensure that the work practices required by R307-801-13(3) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Have with them at the work site their current Utah Renovator certification card; and

(f) Prepare the records required by R307-801-15.

R307-801-17. Asbestos Information Distribution Requirements.

(1) Utah Abatement/Renovation pamphlet. Utah asbestos abatement and renovation companies shall provide owners and occupants of single and multi-family residential structures with the Utah Abatement/Renovation Pamphlet "Asbestos Hazards During Abatement and Renovation Activities" when those structures will be re-occupied after the regulated activities are completed.

(2) No more than 60 days before beginning an abatement or renovation project in a regulated facility, the company performing the abatement or renovation project shall:

(a) Provide the owner of the regulated facility with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least seven working days prior to the abatement or renovation project; and

(b) If the owner does not occupy the regulated facility, provide an adult occupant of the regulated facility with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet, or certify in writing that a pamphlet has been delivered to the regulated facility and that the company performing the abatement or renovation project has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification shall include the address of the unit undergoing abatement or renovation activities, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the company performing the abatement or renovation project, and the date of signature; or

(ii) Obtain a certificate of mailing at least seven working days prior to the abatement or renovation project.

(3) Abatement or renovation projects in common areas. No more than 60 working days before beginning abatement or renovation projects in common areas of a regulated facility, the company performing the abatement or renovation project shall:

(a) Provide the owner with the pamphlet and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least seven working days prior to the abatement or renovation project;

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each regulated facility and make the pamphlet available upon request prior to the start of abatement or renovation project. Such notification shall be accomplished by distributing written notice to each affected unit in the regulated facility. The notice shall describe the general nature and locations of the planned abatement or renovation project, the expected starting and ending dates, how the occupant can obtain the pamphlet and a copy of the required records at no cost to the occupants; or

(ii) Post informational signs describing the general nature and locations of the abatement or renovation project and the anticipated completion date while the abatement or renovation project is ongoing. These signs shall be posted in areas where they are likely to be seen by the occupants of all of the affected units in the regulated facility. The signs shall be accompanied by a posted copy of the pamphlet or information about how interested occupants can review a copy of the pamphlet or obtain a copy from the abatement or renovation company at no cost to occupants. The signs shall also include information about how interested occupants can review a copy of the required records from the abatement or renovation company at no cost to the occupants;

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the regulated facility of the intended abatement or renovation project and to provide the pamphlet; and

(d) If the scope, locations, or expected starting and ending dates of the planned abatement or renovation project change after the initial notification, and the company provided written initial notification to each affected unit, the company performing the abatement or renovation project shall provide further written notification to the owners and occupants of the regulated facility of the revised information for the ongoing or planned activities. This subsequent notification shall be provided before the company performing the abatement or renovation project initiates work beyond that which was described in the original notice.

(4) Written acknowledgment. The written acknowledgments required by paragraphs R307-801-17(2)(a)(i), (2)(b)(i), and (3)(a)(i) shall:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of abatement or renovation project, or no later than the day after the start of an emergency abatement or renovation project, the address of the regulated facility undergoing an abatement or renovation project, the signature of the owner or occupant as applicable, and the date of signature;

(b) Be either a separate sheet or part of any written contract or service agreement for the abatement or renovation project; and

(c) Be written in the same language as the text of the contract or agreement for the abatement or renovation project or, in the case of a non-owner occupied regulated facility, in the same language as the lease or rental agreement or the pamphlet.

KEY: air pollution, asbestos, asbestos hazard emergency response, schools

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Notice of Continuation February 17, 2012 19-2-104(3)(r) through (t)

40 CFR Part 61, Subpart M

40 CFR Part 763, Subpart E

R307. Environmental Quality, Air Quality.
R307-841. Residential Property and Child-Occupied Facility Renovation.
R307-841-1. Purpose.

This rule contains regulations developed under Sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this rule is to ensure the following:

(1) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(2) Individuals performing renovations regulated in accordance with R307-841-3 are properly trained; renovators and firms performing these renovations are certified; and the work practices in R307-841-5 are followed during these renovations.

R307-841-2. Effective Dates.

(1) Training, certification and accreditation requirements, and work practice standards. The training, certification and accreditation requirements and work practice standards in this rule are applicable as follows:

(a) Training programs. Effective April 8, 2010, no training program may provide, offer, or claim to provide training or refresher training for director certification as a renovator or a dust sampling technician without accreditation from the director under R307-842-1. Training programs may apply for accreditation under R307-842-1;

(b) Firms.

(i) Firms may apply for certification under R307-841-7 beginning April 8, 2010.

(ii) On or after April 8, 2010, no firm may perform, offer, or claim to perform renovations without certification from the director under R307-841-7 in target housing or child-occupied facilities, unless the renovation qualifies as one of the exceptions identified in R307-841-3(1).

(c) Individuals. On or after April 8, 2010, all renovations must be directed by renovators certified in accordance with R307-841-8(1) and performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in R307-841-3(1).

(d) Work practices.

(i) On or after April 8, 2010 and before July 5, 2012, all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(a) and (2)(f) in target housing or child-occupied facilities, unless the renovation qualifies for the exceptions identified in R307-841-3(1). This does not apply to renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age six resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

(ii) On or after July 5, 2012, all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(a) and (2)(f) in target housing or child-occupied facilities, unless the renovation qualifies for the exception identified in R307-841-3(1).

(2) Renovation-specific pamphlet. Renovators or firms performing renovations must provide owners and occupants with "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools."

R307-841-3. Applicability.

(1) This rule applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(a) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor, certified pursuant to R307-842-2, that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm^2) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination; or

(b) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA-recognized test kit as defined in R307-840-2 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(c) Renovations in target housing or child-occupied facilities in which a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip samples has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(2) The information distribution requirements in R307-841-4 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in R307-841-5, R307-841-7, and R307-841-8 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of R307-841-5(1)(e) which must be performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b), the cleaning verification requirements of R307-841-5(2), which must be performed by certified renovators, and the recordkeeping requirements of R307-841-6(2)(e) and (f).

R307-841-4. Information Distribution Requirements.

(1) Renovations in dwelling units. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(a) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation; and

(b) If the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet, or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

(a) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities, the expected starting and ending dates, and a statement of how the occupant can obtain the pamphlet and a copy of the records required by R307-841-6(3) and (4) at no cost to the occupants; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the occupants;

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet; and

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(3) Renovations in child-occupied facilities. No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(a)(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(B) Obtain a certificate of mailing at least 7 days prior to the renovation;

(ii) If the adult representative of the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet, or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature; or

(B) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians.

(c) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(4) Written acknowledgment. The written acknowledgments required by paragraphs (1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(a)(ii)(A) of this section must:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature;

(b) Be either a separate sheet or part of any written contract or service agreement for the renovation; and

(c) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

R307-841-5. Work Practice Standards.

(1) Standards for renovation activities. Renovations must be performed by firms certified under R307-841-7 using renovators certified under R307-841-8. The responsibilities of certified firms are set forth in R307-841-7(4) and the responsibilities of certified renovators are set forth in R307-841-8(2).

(a) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation, must remain in place, and must be readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(b) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior renovations. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed;

(B) Close and cover all duct openings in the work area with taped-down plastic sheeting or other impermeable material;

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling, and walls; and

(E) Use precautions to ensure that all personnel, tools, and other items, including the exterior of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation;

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system; and

(D) If the renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.

(c) Prohibited and restricted practices. The work practices listed below are prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of painted surfaces is prohibited;

(ii) The use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planning, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system; and

(iii) Operating a heat gun on painted surfaces is permitted only at temperatures below 1,100 degrees Fahrenheit.

(d) Waste from renovations.

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(e) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris, or residue remains.

(i) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag; and

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth;

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs; and

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp

cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(2) Standards for post-renovation cleaning verification.

(a) Interiors.

(i) A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present. If dust, debris, or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(I) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(II) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(III) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.

(IV) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(I) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(II) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.

(III) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.

(b) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris, or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(3) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another federal, state, territorial, tribal, or local law or regulation requires:

(a) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this rule.

(b) The dust clearance samples are required to be collected by a certified inspector, risk assessor, or dust sampling technician.

(c) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in R307-842-3(5)(h) or any local standard.

(4) Activities conducted after post-renovation cleaning verification. Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this rule if they are conducted after post-renovation cleaning verification has been performed.

R307-841-6. Recordkeeping and Reporting Requirements.

(1) Firms performing renovations must retain and, if requested, make available to the director all records necessary to demonstrate compliance with this rule for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation.

(2) Records that must be retained pursuant to paragraph (1) of this section shall include (where applicable):

(a) Records or reports certifying that a determination had been made that lead-based paint is not present on the components affected by the renovation, as described in R307-841-3(1). These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor certified pursuant to R307-842-2.

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(iii) Records prepared by a certified renovator after collecting paint chip samples, including a description of the components that were tested including their locations, the name and address of the NLLAP-recognized entity performing the analysis, and the results for each sample.

(b) Signed and dated acknowledgments of receipt as described in R307-841-4(1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(a)(ii)(A).

(c) Certifications of attempted delivery as described in R307-841-4(1)(b)(i) and (3)(a)(ii)(A).

(d) Certificates of mailing as described in R307-841-4(1)(a)(ii), (1)(b)(ii), (2)(a)(ii), (3)(a)(i)(B), and (3)(a)(ii)(B).

(e) Records of notification activities performed regarding common area renovations, as described in R307-841-4(2)(c) and (2)(d), and renovations in child-occupied facilities, as described in R307-841-4(3)(b).

(f) Documentation of compliance with the requirements of R307-841-5, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in R307-841-5(1), and that the certified renovator performed the post-renovation cleaning verification described in R307-841-5(2). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in R307-841-3, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's current Utah Lead-Based

Paint Renovator certification card, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(iv) If paint chip samples were collected, that the samples were collected at the specified locations, that the specified NLLAP-recognized laboratory analyzed the samples, and that the results were as specified.

(v) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors);

(B) Closing and covering all HVAC ducts in the work area (interiors);

(C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors);

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors);

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust;

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors); and

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(vi) Waste was contained on-site and while being transported off-site.

(vii) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal; and

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(viii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(3)(a) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this rule to the following persons:

(i) The owner of the building; and, if different,

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(b) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this rule or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(c) The information required to be provided by paragraph (3) of this section may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required by R307-841-6(2)(a)(ii) and the training and work practice compliance information required by R307-841-6(2)(f).

(4) If dust clearance sampling is performed in lieu of cleaning verification as permitted by R307-841-5(3), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(a) The owner of the building; and, if different,

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(c) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

R307-841-7. Firm Certification.

(1) Initial certification.

(a) Firms that perform renovations for compensation must apply to the director for certification to perform renovations or dust sampling. To apply, a firm must submit to the director a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, and pay the correct amount of fees.

(b) After the director receives a firm's application, the director will take one of the following actions within 90 days of the date the application is received:

(i) The director will approve a firm's application if the director determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When the director approves a firm's application, the director will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved;

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete. If the director requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request; and

(iii) The director will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (1)(b)(ii) of this section or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(2) Re-certification. To maintain its certification, a firm must be re-certified by the director.

(a) Timely and complete application. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Lead-Based Paint Certification Application for Firms" which

contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include the correct amount of fees.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until the director has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and the director does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until the director approves its re-certification application.

(iii) If the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (1), of this section.

(b) Director's action on an application. After the director receives a firm's application for re-certification, the director will review the application and take one of the following actions within 90 days of receipt:

(i) The director will approve a firm's application if the director determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When the director approves a firm's application for re-certification, the director will issue the firm a new certificate with an expiration date not more than 5 years from the date that the firm's current certification expires.

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete.

(iii) The director will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(3) Amendment of certification. A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(a) To amend a certification, a firm must submit a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(b) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, the director will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(c) Amending a certification does not affect the certification expiration date.

(4) Firm responsibilities. Firms performing renovations must ensure that:

(a) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with R307-841-8;

(b) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in R307-841-8;

(c) All renovations performed by the firm are performed in accordance with the work practice standards in R307-841-5;

(d) The pre-renovation education requirements of R307-841-4 have been performed; and

(e) The recordkeeping requirements of R307-841-6 are met.

R307-841-8. Renovator Certification and Dust Sampling Technician Certification.

(1) Renovator certification and dust sampling technician certification.

(a) To become a certified renovator or certified dust sampling technician, an individual must successfully complete an initial lead-based paint renovator or dust-sampling technician course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745.

(b) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who have successfully completed a director, EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(c) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.

(d) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or by a state or tribal program that is authorized under subpart Q of 40 CFR 745 within 5 years of the date the individual completed the initial course described in paragraph (1)(a) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by the director under R307-842-1, the EPA or an EPA authorized program on or before March 31, 2010, must complete a renovator refresher course accredited by the director under R307-842-1, the EPA or an EPA authorized program on or before March 31, 2016, to maintain renovator certification. Individuals who completed a renovator course accredited by the director under R307-842-1, the EPA or an EPA authorized program between April 1, 2010 and March 31, 2011, will have one year added to their original 5-year certification.

(2) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with R307-841-5 at all renovations to which they are assigned. A certified renovator:

(a) Must perform all of the tasks described in R307-841-5(2) and must either perform or direct workers who perform all of the tasks described in R307-841-5(1);

(b) Must provide training to workers on the work practices required by R307-841-5(1) that they will be using in performing their assigned tasks;

(c) Must be physically present at the work site when the

signs required by R307-841-5(1)(a) are posted, while the work area containment required by R307-841-5(1)(b) is being established, and while the work area cleaning required by R307-841-5(1)(e) is performed;

(d) Must regularly direct work being performed by other individuals to ensure that the work practices required by R307-841-5(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Must be available, either on-site or by telephone, at all times that renovations are being conducted;

(f) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint;

(g) Must have with them at the work site their current Utah Lead-Based Paint Renovator certification card; and

(h) Must prepare the records required by R307-841-6(2)(a)(ii), (iii), and (f).

(3) Dust sampling technician responsibilities. When performing optional dust clearance sampling under R307-841-5(3), a certified dust sampling technician:

(a) Must collect dust samples in accordance with R307-842-3(5)(h), must send the collected samples to a laboratory recognized by EPA under TSCA Section 405(b), and must compare the results to the clearance levels in accordance with R307-842-3(5)(h); and

(b) Must have with them at the work site their current Utah Lead-Based Paint Dust Sampling Technician certification card.

R307-841-9. Suspending, Revoking, or Modifying an Individual's or Firm's Certification.

(1) Grounds for suspending, revoking, or modifying an individual's certification. The director may suspend, revoke, or modify an individual's certification if the individual fails to comply with state lead-based paint administrative rules. The director may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with R307-841-5. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) Grounds for suspending, revoking, or modifying a firm's certification. The director may suspend, revoke, or modify a firm's certification if the firm:

(a) Submits false or misleading information to the director in its application for certification or re-certification,

(b) Fails to maintain or falsifies records required in R307-841-6, or

(c) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with state lead-based paint administrative rules. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

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R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-22. Specific Licenses.
R313-22-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe the requirements for the issuance of specific licenses.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

R313-22-2. General.

The provisions and requirements of Rule R313-22 are in addition to, and not in substitution for, other requirements of these rules. In particular the provisions of Rule R313-19 apply to applications and licenses subject to Rule R313-22.

R313-22-4. Definitions.

"Alert" means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by off-site response organizations to protect persons off-site.

"Nationally tracked source" is a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in Appendix E of 10 CFR 20.1001 to 20.2402 (2010), which is incorporated by reference. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

"Principal activities" means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

"Site Area Emergency" means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by off-site response organizations to protect persons off-site.

R313-22-30. Specific License by Rule.

A license by rule is issued in the following circumstances, without the necessity of filing an application for a specific license as required by Subsection R313-22-32(1), and the licensee shall be subject to the applicable provisions of Sections R313-22-33, R313-22-34, R313-22-35, R313-22-36 and R313-22-37:

(1) When a site must be timely remediated of contamination by radioactive materials that are subject to licensing under these rules but are unlicensed;

(2) When radioactive materials existing as a result of improper handling, spillage, accidental contamination, or unregulated or illegal possession, transfer, or receipt, must be stored and those materials have not been licensed under these rules.

R313-22-32. Filing Application for Specific Licenses.

(1) Applications for specific licenses shall be filed on a form prescribed by the Director.

(2) The Director may, after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Director to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Applications shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's behalf.

(4) An application for a license may include a request for a license authorizing one or more activities.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Director, provided the references are clear and specific.

(6)(i) Except as provided in R313-22 (6)(ii), (iii) or (iv) of this section, an application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source must either---

(A) Identify the source or device by manufacturer and model number as registered with the sealed source and device registry under R313-22-210; or

(B) Contain the information identified in R313-22-210.

(ii) For sources or devices manufactured before October 23, 2012 that are not registered with sealed source and device registry under R313-22-210 and for which the applicant is unable to provide all categories of information specified in R313-22-210, the application must include:

(A) All available information identified in R313-22-210 concerning the source, and, if applicable, the device; and

(B) Sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

(iii) For sealed sources and devices allowed to be distributed without registration of safety information in accordance with 10 CFR 32.210(g)(1) (2015), the applicant may supply only the manufacturer, model number, and radionuclide and quantity.

(iv) If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

(7) As provided by Section R313-22-35, certain applications for specific licenses filed under these rules shall contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before January 1, 1995, this submittal may follow the renewal application but shall be submitted on or before January 1, 1995.

(8)(a) Applications to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Section R313-22-90, "Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release", shall contain either:

(i) An evaluation showing that the maximum dose to a individual off-site due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted under Subsection R313-22-32(8)(a)(i):

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in Section R313-22-90 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Section R313-22-90;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in Section R313-22-90; or

(vii) Other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted under Subsection R313-22-32(8)(a)(ii) shall include the following information:

(i) Facility description. A brief description of the licensee's facility and area near the site.

(ii) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(iii) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(iv) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(v) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers on-site, and a description of the program for maintaining equipment.

(vi) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the Director; also responsibilities for developing, maintaining, and updating the plan.

(viii) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured on-site workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Director immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency.

NOTE: These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499 or other state or federal reporting requirements, including 40 CFR 302, 2010.

(ix) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the Director.

(x) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site including the use of team training for the scenarios.

(xi) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations and biennial on-site exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises although recommended is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(xiii) Hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Director. The licensee shall provide any comments received within the 60 days to the Director with the emergency plan.

(9) An application from a medical facility, educational institution, or Federal facility to produce Positron Emmission Tomography (PET) radioactive drugs for non-commercial transfer to licensees in its consortium authorized for medical use under Rule R313-32 shall include:

(a) A request for authorization for the production of PET radionuclides or evidence of an existing license issued pursuant to 10 CFR Part 30 or equivalent Agreement State requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides.

(b) Evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in Subsection R313-22-75(9)(a)(ii).

(c) Identification of the individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in Rule R313-32.

(d) Information identified in Subsection R313-22-75(9)(a)(iii) on the PET drugs to be noncommercially transferred to members of its consortium.

R313-22-33. General Requirements for the Issuance of Specific Licenses.

(1) A license application shall be approved if the Director determines that:

(a) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these rules in a manner as to minimize danger to public health and safety or the environment;

(b) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or the environment;

(c) the applicant's facilities are permanently located in Utah, otherwise the applicant shall seek reciprocal recognition as required by Section R313-19-30;

(d) the issuance of the license will not be inimical to the health and safety of the public;

(e) the applicant satisfies applicable special requirements in Sections R313-22-50 and R313-22-75, and Rules R313-24, R313-25, R313-32, R313-34, R313-36, or R313-38; and

(f) in the case of an application for a license to receive and possess radioactive material for commercial waste disposal by land burial, or for the conduct of other activities which the Director determines will significantly affect the quality of the environment, the Director, before commencement of construction of the plant or facility in which the activity will be conducted, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. The Director shall respond to the application within 60 days. Commencement of construction prior to a response and conclusion shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility.

R313-22-34. Issuance of Specific Licenses.

(1) Upon a determination that an application meets the requirements of the Act and the rules of the Board, the Director will issue a specific license authorizing the proposed activity in a form and containing conditions and limitations as the Director deems appropriate or necessary.

(a) Specific licenses for a new license application shall have an expiration date five years from the end of the month in which it is issued.

(b) Specific licenses for a renewed license shall expire ten years after the expiration date of the previous version of the license.

(c) Notwithstanding R313-22-34(1)(b), if during the review of the license renewal application, the Director determines issues that need to be reassessed sooner than the ten year renewal interval, the Director may shorten the renewal interval on a case by case basis. Examples of issues that may result in a shortened renewal interval includes new technologies, new company management, poor regulatory compliance, or other situations that would warrant increased attention.

(2) The Director may incorporate in licenses at the time of issuance, additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of radioactive material subject to Rule R313-22 as the Director deems appropriate or necessary in order to:

(a) minimize danger to public health and safety or the environment;

(b) require reports and the keeping of records, and to provide for inspections of activities under the license as may be appropriate or necessary; and

(c) prevent loss or theft of material subject to Rule R313-22.

R313-22-35. Financial Assurance and Recordkeeping for Decommissioning.

(1)(a) Applicants for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall also be submitted when a combination of radionuclides is involved if R divided by 10^5 is greater than one, where R is defined here as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference.

(b) Holders of, or applicants for, a specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, or when a combination of isotopes is involved if R, as defined in Subsection R313-22-35(1)(a), divided by 10^{12} is greater than one, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(c) Applicants for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(2) Applicants for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Subsection R313-22-35(4), or authorizing the possession and use of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either:

(a) submit a decommissioning funding plan as described in Subsection R313-22-35(5); or

(b) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection R313-22-35(4) using one of the methods described in Subsection R313-22-35(6). Applicants for a specific license authorizing the possession and use of source material in a readily dispersible form shall submit a certification that financial assurance for decommissioning has been provided in the amount of $225,000 by October 20, 2007. For an applicant subject to this subsection, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6) shall be submitted to the Director before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Director, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements in Subsection R313-22-35(6).

(3)(a) Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1) or (2), shall provide financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(b) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(1), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in Section R313-22-35. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(c) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(2), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(d) A licensee who has submitted an application before October 20, 2006, for renewal of license in accordance with Section R313-22-37, shall provide financial assurance for decommissioning in accordance with Subsections R313-22-35(1) and (2).

(e) Waste collectors and waste processors, as defined in Appendix G of 10 CFR 20.1001 to 20.2402, 2015, which is

incorporated by reference, shall provide financial assurance in an amount based on a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall include the cost of disposal of the maximum amount (curies) of radioactive material permitted by the license, and the cost of disposal of the maximum quantity, by volume, of radioactive material which could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of Rule R313-15.

(f) If, in surveys made under R313-15-501(1), residual radioactivity in the facility and environment, including the subsurface, is detected at levels that would, if left uncorrected, prevent the site from meeting the R313-15-402 criteria for unrestricted use, the licensee shall submit a decommissioning funding plan within one year of when the survey is completed.

(g) Holders of a specific license issued prior to October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)(h), shall submit a decommissioning funding plan to the Director on or before October 20, 2007. Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)(h), shall submit a decommissioning funding plan to the Director as a part of the license application.

(h) Applicants for a specific license authorizing the possession and use of radioactive materials in sufficient quantities that require financial assurance and recordkeeping for decommissioning under Section R313-22-35 shall assure that all documents submitted to the Director for the purpose of demonstrating compliance with financial assurance and recordkeeping requirements meet the applicable criteria contained in the Nuclear Regulatory Commission's document NUREG-1757, Volume 3, "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness" (9/2003).

(i) Documents provided to the Director under Subsection R313-22-35(3)(h) shall provide that legal remedies be sought in a court of appropriate jurisdiction within Utah.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit an amount of financial assurance listed in this table must do so during a license application or as part of an amendment to an existing license. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

TABLE

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10^4 is greater than one but R divided by 10^5 is less than or equal to one:	$1,125,000
Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10^3 is greater than one but R divided by 10^4 is less than or equal to one:	$225,000
Greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in sealed sources or plated foils. For combination of radionuclides, if R, as defined in R313-22-35(1)(a), divided by 10^{10} is greater than one, but R divided by 10^{12} is less than or equal to one:	$113,000

(5)(a) Each decommissioning funding plan shall be submitted for review and approval and shall contain-

(i) A detailed cost estimate for decommissioning, in an amount reflecting:

(A) The cost of an independent contractor to perform all decommissioning activities;

(B) The cost of meeting the R313-15-402 criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of R313-15-403, the cost estimate may be based on meeting the R313-15-403 criteria;

(C) The volume of onsite subsurface material containing residual radioactivity that will require remediation; and

(D) An adequate contingency factor.

(ii) Identification of and justification for using the key assumptions contained in the decommissioning cost estimate;

(iii) A description of the method of assuring funds for decommissioning from R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;

(iv) A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and

(v) A signed original of the financial instrument obtained to satisfy the requirements of R313-22-35(6) (unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning).

(b) At the time of license renewal and at intervals not to exceed 3 years, the decommissioning funding plan shall be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this cannot be done until the updated decommissioning funding plan is approved. The decommissioning funding plan shall update the information submitted with the original or prior approved plan, and shall specifically consider the effect of the following events on decommissioning costs:

(i) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material;

(ii) Waste inventory increasing above the amount previously estimated;

(iii) Waste disposal costs increasing above the amount previously estimated;

(iv) Facility modifications;

(v) Changes in authorized possession limits;

(vi) Actual remediation costs that exceed the previous cost estimate;

(vii) Onsite disposal; and

(viii) Use of a settling pond.

(6) Financial assurance for decommissioning shall be provided by one or more of the following methods:

(a) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities;

(b) A surety method, insurance, or other guarantee method. These methods shall guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as

contained in Subsection R313-22-35(8). A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of Section R313-22-35. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(9). A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of Section R313-22-35 or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. A surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

(i) the surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date the issuer notifies the Director, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Director within 30 days after receipt of notification of cancellation,

(ii) the surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency, and

(iii) the surety method or insurance shall remain in effect until the Director has terminated the license;

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in Subsection R313-22-35(6)(b);

(d) In the case of Federal, State or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in Subsection R313-22-35(4) and indicating that funds for decommissioning will be obtained when necessary; or

(e) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(7) Persons licensed under Rule R313-22 shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), licensees shall transfer all records described in Subsections R313-22-35(7)(a) through (d) to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Director considers important to decommissioning consists of the following:

(a) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(b) as-built drawings and modification of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(c) except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, including all of the following:

(i) all areas designated and formerly designated as restricted areas as defined under Section R313-12-3;

(ii) all areas outside of restricted areas that require documentation under Subsection R313-22-35(7)(a);

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented under Section R313-15-1109; and

(iv) all areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in Sections R313-15-401 through R313-15-406, or apply for approval for disposal under Section R313-15-1002; and

(d) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(8) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), the parent company shall meet one of the following criteria:

(i) The parent company shall have all of the following:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

(B) Net working capital and tangible net worth each at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used; or

(ii) The parent company shall have all of the following:

(A) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

(B) Tangible net worth at least six times the current decommissioning cost estimate, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if certification is used.

(b) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the Director within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(c)(i) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(ii) If the parent company no longer meets the requirements of Subsection R313-22-35(8)(a) the licensee shall send notice to the Director of intent to establish alternative financial assurance as specified in Section R313-22-35. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(d) The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(i) The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Director, as evidenced by the return receipts.

(ii) If the licensee fails to provide alternate financial assurance as specified in Section R313-22-35 within 90 days after receipt by the licensee and Director of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(iii) The parent company guarantee and financial test provisions shall remain in effect until the Director has terminated the license.

(iv) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate State or Federal Government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(9) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), a company shall meet all of the following criteria:

(i) Tangible net worth at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(ii) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(iii) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

(b) To pass the financial test, a company shall meet all of the following additional requirements:

(i) The company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934;

(ii) The company's independent certified public accountant shall have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Director within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(iii) After the initial financial test, the company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(c) If the licensee no longer meets the requirements of Subsection R313-22-35(9)(a), the licensee shall send immediate notice to the Director of its intent to establish alternate financial assurance as specified in Section R313-22-35 within 120 days of such notice.

(d) The terms of a self-guarantee which an applicant or licensee furnishes shall provide that:

(i) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Director, as evidenced by the return receipt.

(ii) The licensee shall provide alternative financial assurance as specified in Section R313-22-35 within 90 days following receipt by the Director of a notice of a cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the Director has terminated the license or until another financial assurance method acceptable to the Director has been put in effect by the licensee.

(iv) The licensee shall promptly forward to the Director and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the Director within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of Subsection R313-22-35(9)(a).

(vi) The applicant or licensee shall provide to the Director a written guarantee, a written commitment by a corporate officer, which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Director, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

R313-22-36. Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas.

(1) A specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under Section R313-22-37 no less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license, the existing license expires at the end of the day on which the Director makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) A specific license revoked by the Director expires at

the end of the day on the date of the Director's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by an Order issued by the Director.

(3) A specific license continues in effect, beyond the expiration date if necessary, with respect to possession of radioactive material until the Director notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(a) limit actions involving radioactive material to those related to decommissioning; and

(b) continue to control entry to restricted areas until they are suitable for release so that there is not an undue hazard to public health and safety or the environment.

(4) Within 60 days of the occurrence of any of the following, a licensee shall provide notification to the Director in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release so that there is not an undue hazard to public health and safety or the environment, or submit within 12 months of notification a decommissioning plan, if required by Subsection R313-22-36(7), and begin decommissioning upon approval of that plan if:

(a) the license has expired pursuant to Subsections R313-22-36(1) or (2); or

(b) the licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment; or

(c) no principal activities under the license have been conducted for a period of 24 months; or

(d) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment.

(5) Coincident with the notification required by Subsection R313-22-36(4), the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to Section R313-22-35 in conjunction with a license issuance or renewal or as required by Section R313-22-36. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to Subsection R313-22-36(7)(d)(v).

(a) A licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so on or before August 15, 1997.

(b) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Director.

(6) The Director may grant a request to extend the time periods established in Subsection R313-22-36(4) if the Director determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to Subsection R313-22-36(4). The schedule for decommissioning set forth in Subsection R313-22-36(4) may not commence until the Director has made a determination on the request.

(7)(a) A decommissioning plan shall be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Director and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(b) The Director may approve an alternate schedule for submittal of a decommissioning plan required pursuant to Subsection R313-22-36(4) if the Director determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(c) Procedures such as those listed in Subsection R313-22-36(7)(a) with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(d) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) a description of planned decommissioning activities;

(iii) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) a description of the planned final radiation survey; and

(v) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in Subsection R313-22-36(8).

(e) The proposed decommissioning plan will be approved by the Director if the information therein demonstrates that the decommissioning will be completed as soon as practical and that the health and safety of workers and the public will be adequately protected.

(8)(a) Except as provided in Subsection R313-22-36(9), licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practical but no later than 24 months following the initiation of decommissioning.

(b) Except as provided in Subsection R313-22-36(9), when decommissioning involves the entire site, the licensee shall request license termination as soon as practical but no later than 24 months following the initiation of decommissioning.

(9) The Director may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Director determines that the alternative is warranted by consideration of the following:

(a) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(b) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(c) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(d) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived

radionuclides to decay; and

(e) other site-specific factors which the Director may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(10) As the final step in decommissioning, the licensee shall:

(a) certify the disposition of all licensed material, including accumulated wastes, by submitting a completed Form DWMRC-14 or equivalent information; and

(b) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406. The licensee shall, as appropriate:

(i) report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters--removable and fixed-- for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(11) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Director determines that:

(a) radioactive material has been properly disposed;

(b) reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) documentation is provided to the Director that:

(i) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406; or

(ii) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406.

R313-22-37. Renewal of Licenses.

Application for renewal of a specific license shall be filed on a form prescribed by the Director and in accordance with Section R313-22-32.

R313-22-38. Amendment of Licenses at Request of Licensee.

Applications for amendment of a license shall be filed in accordance with Section R313-22-32 and shall specify the respects in which the licensee desires the license to be amended and the grounds for the amendment.

R313-22-39. Director Action on Applications to Renew or Amend.

In considering an application by a licensee to renew or amend the license, the Director will use the criteria set forth in Sections R313-22-33, R313-22-50, and R313-22-75 and in Rules R313-24, R313-25, R313-32, R313-34, R313-36, or R313-38, as applicable.

R313-22-50. Special Requirements for Specific Licenses of Broad Scope.

Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons who are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(1) The different types of broad licenses are set forth below:

(a) A "Type A specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license, for any authorized purpose. The quantities specified are usually in the multicurie range.

(b) A "Type B specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100 for any authorized purpose. The possession limit for a Type B broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column I. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column I, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(c) A "Type C specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100, for any authorized purpose. The possession limit for a Type C broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column II. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column II, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(2) An application for a Type A specific license of broad scope shall be approved if all of the following are complied with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has engaged in a reasonable number of activities involving the use of radioactive material; and

(c) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) the establishment of a radiation safety committee composed of such persons as a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive material;

(ii) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(iii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety

committee of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(2)(c)(iii)(B) prior to use of the radioactive material.

(3) An application for a Type B specific license of broad scope shall be approved if all of the following are complied with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(ii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety officer of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(3)(b)(iii)(B) prior to use of the radioactive material.

(4) An application for a Type C specific license of broad scope shall be approved, if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant submits a statement that radioactive material will be used only by, or under the direct supervision of individuals, who have received:

(i) a college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering; and

(ii) at least forty hours of training and experience in the safe handling of radioactive material, and in the characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, and biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used; and

(c) the applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, recordkeeping, material control and accounting, and management review necessary to assure safe operations.

(5) Specific licenses of broad scope are subject to the following conditions:

(a) unless specifically authorized by the Director, persons licensed pursuant to this section shall not:

(i) conduct tracer studies in the environment involving direct release of radioactive material;

(ii) receive, acquire, own, possess, use, or transfer devices containing 100,000 curies (3.7 PBq) or more of radioactive material in sealed sources used for irradiation of materials;

(iii) conduct activities for which a specific license issued by the Director under Section R313-22-75, and Rules R313-25, R313-32 or R313-36 is required; or

(iv) add or cause the addition of radioactive material to a food, beverage, cosmetic, drug or other product designed for ingestion or inhalation by, or application to, a human being.

(b) Type A specific licenses of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.

(c) Type B specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.

(d) Type C specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used, by or under the direct supervision of, individuals who satisfy the requirements of Subsection R313-22-50(4).

R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.

(1) Licensing the introduction of radioactive material in exempt concentrations into products or materials, and transfer of ownership or possession of the products and materials.

(a) The authority to introduce radioactive material in exempt concentrations into equipment, devices, commodities or other products may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555; and

(b) The manufacturer, processor or producer of equipment, devices, commodities or other products containing exempt concentrations of radioactive materials may obtain the authority to transfer possession or control of the equipment, devices, commodities, or other products containing exempt concentrations to persons who are exempt from regulatory requirements only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Licensing the distribution of radioactive material in exempt quantities. Authority to transfer possession or control by the manufacturer, processor or producer of equipment, devices, commodities or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons who are exempted from regulatory requirements may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(3) Reserved

(4) Licensing the manufacture and distribution of devices to persons generally licensed under Subsection R313-21-22(4).

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Subsection R313-21-22(4) or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(i) the applicant satisfies the general requirements of Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(iii) the device has been registered in the Sealed Source and Device Registry.

(A) the device can be safely operated by persons not having training in radiological protection,

(B) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that a person will receive in one year, a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1), and

(C) under accident conditions, such as fire and explosion, associated with handling, storage and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

TABLE

Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye	150.0 mSv (15 rems)
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter	2.0 Sv (200 rems)
Other organs	500.0 mSv (50 rems); and

(iii) each device bears a durable, legible, clearly visible label or labels approved by the Director, which contain in a clearly identified and separate statement:

(A) instructions and precautions necessary to assure safe installation, operation and servicing of the device; documents such as operating and service manuals may be identified in the label and used to provide this information,

(B) the requirement, or lack of requirement, for leak testing, or for testing an "on-off" mechanism and indicator, including the maximum time interval for testing, and the identification of radioactive material by radionuclide, quantity of radioactivity, and date of determination of the quantity, and

(C) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) "The receipt, possession, use and transfer of this device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of the Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION -RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(II) "The receipt, possession, use and transfer of this device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(D) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in Section R313-15-901, and the name of the manufacturer or initial distributor.

(E) Each device meeting the criteria of Subsection R313-21-22(4)(c)(xiii)(A), bears a permanent label, for example, embossed, etched, stamped, or engraved, affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in Section R313-15-901.

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Director will consider information which includes, but is not limited to:

(i) primary containment, or source capsule;

(ii) protection of primary containment;

(iii) method of sealing containment;

(iv) containment construction materials;

(v) form of contained radioactive material;

(vi) maximum temperature withstood during prototype tests;

(vii) maximum pressure withstood during prototype tests;

(viii) maximum quantity of contained radioactive material;

(ix) radiotoxicity of contained radioactive material; and

(x) operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under Subsection R313-21-22(4), or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with this activity or activities, and basis for these estimates. The submitted information shall demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1).

(d)(i) If a device containing radioactive material is to be transferred for use under the general license contained in Subsection R313-21-22(4), each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(i)(A) through (E) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) a copy of the general license contained in Subsection R313-21-22(4); if Subsections R313-21-22(4)(c)(ii) through (iv) or R313-21-22(4)(c)(xiii) do not apply to the particular device, those paragraphs may be omitted;

(B) a copy of Sections R313-12-51, R313-15-1201, and R313-15-1202;

(C) a list of services that can only be performed by a specific licensee;

(D) Information on acceptable disposal options including estimated costs of disposal; and

(E) An indication that the Director's policy is to issue civil penalties for improper disposal.

(ii) If radioactive material is to be transferred in a device for use under an equivalent general license of the Nuclear Regulatory Commission, an Agreement State, or Licensing State, each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(ii)(A) through (D) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be

provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) A copy of an Agreement State's or Licensing State's regulations equivalent to Sections R313-12-51, R313-15-1201, R313-15-1202, and Subsection R313-21-22(4) or a copy of 10 CFR 31.5, 10 CFR 31.2, 10 CFR 30.51, 10 CFR 20.2201, and 10 CFR 20.2202. If a copy of the Nuclear Regulatory Commission regulations is provided to a prospective general licensee in lieu of the Agreement State's or Licensing State's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State or Licensing State; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

(B) A list of services that can only be performed by a specific licensee;

(C) Information on acceptable disposal options including estimated costs of disposal; and

(D) The name or title, address, and phone number of the contact at the Nuclear Regulatory Commission, Agreement State, or Licensing State from which additional information may be obtained.

(iii) An alternative approach to informing customers may be proposed by the licensee for approval by the Director.

(iv) Each device that is transferred after February 19, 2002 must meet the labeling requirements in Subsection R313-22-75(4)(a)(iii).

(v) If a notification of bankruptcy has been made under Section R313-19-34 or the license is to be terminated, each person licensed under Subsection R313-22-75(4) shall provide, upon request, to the Director, the Nuclear Regulatory Commission, or an appropriate Agreement State or Licensing State, records of final disposition required under Subsection R313-22-75(4)(d)(vii)(H).

(vi) Each person licensed under Subsection R313-22-75(4) to initially transfer devices to generally licensed persons shall comply with the requirements of Subsections R313-22-75(4)(d)(vi) and (vii).

(A) The person shall report all transfers of devices to persons for use under the general license under Subsection R313-21-22(4) and all receipts of devices from persons licensed under Subsection R313-21-22(4) to the Director. The report must be submitted on a quarterly basis on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(B) The required information for transfers to general licensees includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(C) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(D) For devices received from a Subsection R313-21-22(4) general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(E) If the licensee makes changes to a device possessed by a Subsection R313-21-22(4) general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(F) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(G) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(H) If no transfers have been made to or from persons generally licensed under Subsection R313-21-22(4) during the reporting period, the report must so indicate.

(vii) The person shall report all transfers of devices to persons for use under a general license in the Nuclear Regulatory Commission's, an Agreement State's, or Licensing State's regulations that are equivalent to Subsection R313-21-22(4) and all receipts of devices from general licensees in the Nuclear Regulatory Commission's, Agreement State's, or Licensing State's jurisdiction to the Nuclear Regulatory Commission, or to the responsible Agreement State or Licensing State agency. The report must be submitted on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(A) The required information for transfers to general licensee includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of the device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(B) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(C) For devices received from a general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(D) If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(E) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(F) The report must clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(G) If no transfers have been made to or from a Nuclear

Regulatory Commission licensee, or to or from a particular Agreement State or Licensing State licensee during the reporting period, this information shall be reported to the Nuclear Regulatory Commission or the responsible Agreement State or Licensing State agency upon request of the agency.

(H) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by Subsection R313-22-75(4)(d)(vii). Records required by Subsection R313-22-75(4)(d)(vii)(H) must be maintained for a period of three years following the date of the recorded event.

(5) Special requirements for the manufacture, assembly or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to persons generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 (2015) or their equivalent.

(6) Special requirements for license to manufacture or initially transfer calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, and 10 CFR 70.39 (2015), or their equivalent.

(7) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection R313-21-22(9) will be approved if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding 370 kilobecquerel (ten uCi) each;

(ii) iodine-131 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iii) carbon-14 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iv) hydrogen-3 (tritium) in units not exceeding 1.85 megabecquerel (50 uCi) each;

(v) iron-59 in units not exceeding 740.0 kilobecquerel (20 uCi) each;

(vi) cobalt-57 in units not exceeding 370 kilobecquerel (ten uCi) each;

(vii) selenium-75 in units not exceeding 370 kilobecquerel (ten uCi) each; or

(viii) mock iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each;

(c) prepackaged units bear a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 370 kilobecquerel (ten uCi) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1.85 megabecquerel (50 uCi) of hydrogen-3 (tritium); 740.0 kilobecquerel (20 uCi) of iron-59; or Mock Iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each; and

(ii) displaying the radiation caution symbol described in Section R313-15-901 and the words, "CAUTION, RADIOACTIVE MATERIAL", and "Not for Internal or External Use in Humans or Animals";

(d) one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(i) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the Nuclear Regulatory Commission or of a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

.....

Name of Manufacturer"

(ii) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....

Name of Manufacturer"

(e) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in Section R313-15-1001.

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61, 32.62, 2015 ed. are met.

(9) Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive material for medical use under R313-32.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy; or

(D) operating as a nuclear pharmacy within a medical

institution; or

(E) registered with a State Agency as a Positron Emission Tomography (PET) drug production facility.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant satisfies the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a)(ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iv), or an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear pharmacist as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference);

(B) this individual meets the requirements specified in Rule R313-32 (incorporating 10 CFR 35.55(b) and 10 CFR 35.59 by reference) and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iv).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), as an authorized nuclear pharmacist if:

(A) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator produced radioactive material, and

(B) The individual practiced at a pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

(v) Shall provide to the Director:

(A) a copy of each individual's certification by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or Agreement State as specified in Rule R313-32 (incorporating 10 CFR 35.55(a) by reference) with the written attestation signed by a preceptor as required by Rule R313-32 (incorporating 10 CFR 35.55(b)(2) by reference); or

(B) the Nuclear Regulatory Commission or Agreement State license; or

(C) the permit issued by a licensee or Commission master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(D) the permit issued by a U.S. Nuclear Commission master materials licensee; or

(E) documentation that only accelerator produced radioactive materials were used in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007 or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

(F) a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and R313-22-75(9)(b)(ii)(C), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under Rule R313-32 for use as a calibration, transmission, or reference source or for the uses listed in Rule R313-32 (incorporating 10 CFR 35.400, 10 CFR 35.500, 10 CFR 35.600, and 35.1000 by reference) will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Director for distribution to persons licensed pursuant to Rule R313-32 (incorporating 10 CFR 35.18, 10 CFR 35.400, 10 CFR 35.500, and 10 CFR 35.600 by reference) or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) the source or device has been registered in the Sealed Source and Device Registry.

(e) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(f) in determining the acceptable interval for test of leakage of radioactive material, the Director shall consider information that includes, but is not limited to:

(i) primary containment or source capsule,

(ii) protection of primary containment,

(iii) method of sealing containment,

(iv) containment construction materials,

(v) form of contained radioactive material,

(vi) maximum temperature withstood during prototype tests,

(vii) maximum pressure withstood during prototype tests,

(viii) maximum quantity of contained radioactive material,

(ix) radiotoxicity of contained radioactive material, and

(x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Director will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Director may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11)(a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DWMRC-12; or

(B) a copy of the general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(5) and a copy of the Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DWMRC-12 with a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(5);

(v) report to the Director all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(5). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Director and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(5) during the reporting period, the report shall so indicate;

(vi) provide certain other reports as follows:

(A) report to the Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the Nuclear Regulatory Commission general license in 10 CFR 40.25 (2010);

(B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(5),

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general

licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person,

(D) if no transfers have been made to Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the Nuclear Regulatory Commission, and

(E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device transferred, and compliance with the report requirements of Subsection R313-22-75(11).

R313-22-90. Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release. Refer to Subsection R313-22-32(8).

TABLE

Radioactive Material(1)	Release Fraction	Quantity (curies)
Actinium-228	0.001	4,000
Americium-241	.001	2
Americium-242	.001	2
Americium-243	.001	2
Antimony-124	.01	4,000
Antimony-126	.01	6,000
Barium-133	.01	10,000
Barium-140	.01	30,000
Bismuth-207	.01	5,000
Bismuth-210	.01	600
Cadmium-109	.01	1,000
Cadmium-113	.01	80
Calcium-45	.01	20,000
Californium-252 (20 mg)	.001	9
Carbon-14	.01 Non CO	50,000
Cerium-141	.01	10,000
Cerium-144	.01	300
Cesium-134	.01	2,000
Cesium-137	.01	3,000
Chlorine-36	.5	100
Chromium-51	.01	300,000
Cobalt-60	.001	5,000
Copper-64	.01	200,000
Curium-242	.001	60
Curium-243	.001	3
Curium-244	.001	4
Curium-245	.001	2
Europium-152	.01	500
Europium-154	.01	400
Europium-155	.01	3,000
Germanium-68	.01	2,000
Gadolinium-153	.01	5,000
Gold-198	.01	30,000
Hafnium-172	.01	400
Hafnium-181	.01	7,000
Holmium-166m	.01	100
Hydrogen-3	.5	20,000
Iodine-125	.5	10
Iodine-131	.5	10
Indium-114m	.01	1,000
Iridium-192	.001	40,000
Iron-55	.01	40,000
Iron-59	.01	7,000
Krypton-85	1.0	6,000,000
Lead-210	.01	8
Manganese-56	.01	60,000
Mercury-203	.01	10,000
Molybdenum-99	.01	30,000
Neptunium-237	.001	2
Nickel-63	.01	20,000
Niobium-94	.01	300
Phosphorus-32	.5	100
Phosphorus-33	.5	1,000
Polonium-210	.01	10
Potassium-42	.01	9,000
Promethium-145	.01	4,000
Promethium-147	.01	4,000
Ruthenium-106	.01	200
Radium-226	.001	100
Samarium-151	.01	4,000
Scandium-46	.01	3,000
Selenium-75	.01	10,000
Silver-110m	.01	1,000
Sodium-22	.01	9,000
Sodium-24	.01	10,000
Strontium-89	.01	3,000
Strontium-90	.01	90
Sulfur-35	.5	900
Technetium-99	.01	10,000
Technetium-99m	.01	400,000
Tellurium-127m	.01	5,000
Tellurium-129m	.01	5,000
Terbium-160	.01	4,000
Thulium-170	.01	4,000
Tin-113	.01	10,000
Tin-123	.01	3,000
Tin-126	.01	1,000
Titanium-44	.01	100
Vanadium-48	.01	7,000
Xenon-133	1.0	900,000
Yttrium-91	.01	2,000
Zinc-65	.01	5,000
Zirconium-93	.01	400
Zirconium-95	.01	5,000
Any other beta-gamma emitter	.01	10,000
Mixed fission products	.01	1,000
Mixed corrosion products	.01	10,000
Contaminated equipment, beta-gamma	.001	10,000
Irradiated material, any form other than solid noncombustible	.01	1,000
Irradiated material, solid noncombustible	.001	10,000
Mixed radioactive waste, beta-gamma	.01	1,000
Packaged mixed waste, beta-gamma(2)	.001	10,000
Any other alpha emitter	.001	2
Contaminated equipment, alpha	.0001	20
Packaged waste, alpha(2)	.0001	20
Combinations of radioactive materials listed above(1)	-----	-----

(1) For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Section R313-22-90 exceeds one.

(2) Waste packaged in Type B containers does not require an emergency plan.

R313-22-100. Limits for Broad Licenses. Refer to Section R313-22-50.

TABLE

RADIOACTIVE MATERIAL	COLUMN I	COLUMN II
	CURIES	
Antimony-122	1	0.01
Antimony-124	1	0.01
Antimony-125	1	0.01
Arsenic-73	10	0.1
Arsenic-74	1	0.01
Arsenic-76	1	0.01
Arsenic-77	10	0.1
Barium-131	10	0.1
Barium-140	1	0.01
Beryllium-7	10	0.1
Bismuth-210	0.1	0.001
Bromine-82	10	0.1
Cadmium-109	1	0.01
Cadmium-115m	1	0.01
Cadmium-115	10	0.1
Calcium-45	1	0.01
Calcium-47	10	0.1
Carbon-14	100	1
Cerium-141	10	0.1

Cerium-143	10	0.1
Cerium-144	0.1	0.001
Cesium-131	100	1
Cesium-134m	100	1
Cesium-134	0.1	0.001
Cesium-135	1	0.01
Cesium-136	10	0.1
Cesium-137	0.1	0.001
Chlorine-36	1	0.01
Chlorine-38	100	1
Chromium-51	100	1
Cobalt-57	10	0.1
Cobalt-58m	100	1
Cobalt-58	1	0.01
Cobalt-60	0.1	0.001
Copper-64	10	0.1
Dysprosium-165	100	1
Dysprosium-166	10	0.1
Erbium-169	10	0.1
Erbium-171	10	0.1
Europium-152 (9.2h)	10	0.1
Europium-152 (13y)	0.1	0.001
Europium-154	0.1	0.001
Europium-155	1	0.01
Fluorine-18	100	1
Gadolinium-153	1	0.01
Gadolinium-159	10	0.1
Gallium-72	10	0.1
Germanium-71	100	1
Gold-198	10	0.1
Gold-199	10	0.1
Hafnium-181	1	0.01
Holmium-166	10	0.1
Hydrogen-3	100	1
Indium-113m	100	1
Indium-114m	1	0.01
Indium-115m	100	1
Indium-115	1	0.01
Iodine-125	0.1	0.001
Iodine-126	0.1	0.001
Iodine-129	0.1	0.01
Iodine-131	0.1	0.001
Iodine-132	10	0.1
Iodine-133	1	0.01
Iodine-134	10	0.1
Iodine-135	1	0.01
Iridium-192	1	0.01
Iridium-194	10	0.1
Iron-55	10	0.1
Iron-59	1	0.01
Krypton-85	100	1
Krypton-87	10	0.1
Lanthanum-140	1	0.01
Lutetium-177	10	0.1
Manganese-52	1	0.01
Manganese-54	1	0.01
Manganese-56	10	0.1
Mercury-197m	10	0.1
Mercury-197	10	0.1
Mercury-203	1	0.01
Molybdenum-99	10	0.1
Neodymium-147	10	0.1
Neodymium-149	10	0.1
Nickel-59	10	0.1
Nickel-63	1	0.01
Nickel-65	10	0.1
Niobium-93m	1	0.01
Niobium-95	1	0.01
Niobium-97	100	1
Osmium-185	1	0.01
Osmium-191m	100	1
Osmium-191	10	0.1
Osmium-193	10	0.1
Palladium-103	10	0.1
Palladium-109	10	0.1
Phosphorus-32	1	0.01
Platinum-191	10	0.1
Platinum-193m	100	1
Platinum-193	10	0.1
Platinum-197m	100	1
Platinum-197	10	0.1
Polonium-210	0.01	0.0001
Potassium-42	1	0.01
Praseodymium-142	10	0.1
Praseodymium-143	10	0.1
Promethium-147	1	0.01
Promethium-149	10	0.1
Radium-226	0.01	0.0001
Rhenium-186	10	0.1
Rhenium-188	10	0.1
Rhodium-103m	1,000	10
Rhodium-105	10	0.1
Rubidium-86	1	0.01
Rubidium-87	1	0.01
Ruthenium-97	100	1
Ruthenium-103	1	0.01
Ruthenium-105	10	0.1
Ruthenium-106	0.1	0.001
Samarium-151	1	0.01
Samarium-153	10	0.1
Scandium-46	1	0.01
Scandium-47	10	0.1
Scandium-48	1	0.01
Selenium-75	1	0.01
Silicon-31	10	0.1
Silver-105	1	0.01
Silver-110m	0.1	0.001
Silver-111	10	0.1
Sodium-22	0.1	0.001
Sodium-24	1	0.01
Strontium-85m	1,000	10
Strontium-85	1	0.01
Strontium-89	1	0.01
Strontium-90	0.01	0.0001
Strontium-91	10	0.1
Strontium-92	10	0.1
Sulphur-35	10	0.1
Tantalum-182	1	0.01
Technetium-96	10	0.1
Technetium-97m	10	0.1
Technetium-97	10	0.1
Technetium-99m	100	1
Technetium-99	1	0.01
Tellurium-125m	1	0.01
Tellurium-127m	1	0.01
Tellurium-127	10	0.1
Tellurium-129m	1	0.01
Tellurium-129	100	1
Tellurium-131m	10	0.1
Tellurium-132	1	0.01
Terbium-160	1	0.01
Thallium-200	10	0.1
Thallium-201	10	0.1
Thallium-202	10	0.1
Thallium-204	1	0.01
Thulium-170	1	0.01
Thulium-171	1	0.01
Tin-113	1	0.01
Tin-125	1	0.01
Tungsten-181	1	0.01
Tungsten-185	1	0.01
Tungsten-187	10	0.1
Vanadium-48	1	0.01
Xenon-131m	1,000	10
Xenon-133	100	1
Xenon-135	100	1
Ytterbium-175	10	0.1
Yttrium-90	1	0.01
Yttrium-91	1	0.01
Yttrium-92	10	0.1
Yttrium-93	1	0.01
Zinc-65	1	0.01
Zinc-69m	10	0.1
Zinc-69	100	1
Zirconium-93	1	0.01
Zirconium-95	1	0.01
Zirconium-97	1	0.01
Any radioactive material other than source material, special nuclear material, or alpha-emitting radioactive material not listed above	0.1	0.001

R313-22-201. Serialization of Nationally Tracked Sources.

Each licensee who manufacturers a nationally tracked source after October 19, 2007, shall assign a unique serial number to each nationally tracked source. Serial numbers must be composed only of alpha-numeric characters.

R313-22-210. Registration of Product Information.

Licensees who manufacture or initially distribute a sealed source or device containing a sealed source whose product is intended for use under a specific license or general license are deemed to have provided reasonable assurance that the radiation safety properties of the source or device are adequate to protect

health and minimize danger to life and the environment if the sealed source or device has been evaluated in accordance with 10 CFR 32.210 (2015) or equivalent regulations of an Agreement State.

R313-22-211. Inactivation of Certificates of Registration of Sealed Sources and Devices.

Licensees who no longer manufacture or initially transfer any of the sealed sources or devices covered by a particular certificate issued in accordance with the requirements of R313-22-210 shall request inactivation of the registration certificate in accordance with 10 CFR 32.211 (2015) or equivalent regulations of an Agreement State.

KEY: specific licenses, decommissioning, broad scope, radioactive materials
May 9, 2016 19-3-104
Notice of Continuation September 23, 2011 19-6-107

R317. Environmental Quality, Water Quality.
R317-7. Underground Injection Control (UIC) Program.
R317-7-0. Effective Date and Applicability of Rules.

The effective date of these rules is January 19, 1983 (40 C.F.R. 147.2250). Class II wells are administered by the Division of Oil, Gas and Mining, whose primacy became effective October 8, 1982 (40 C.F.R. 147.2251).

R317-7-1. Incorporation By Reference.

1.1 Underground Injection Control Program - 40 C.F.R. 144.7, 144.13(d), 144.14, 144.16, 144.23(c), 144.32, 144.34, 144.36, 144.38, 144.39, 144.40, 144.41, 144.51(a)-(o) and (q), 144.52, 144.53, 144.54, 144.55, 144.60, 144.61, 144.62, 144.63, 144.64, 144.65, 144.66, 144.70, and 144.87, July 1, 2003 ed., are adopted and incorporated by reference with the following exceptions:

A. "Director" refers to the Director of the Division of Water Quality.

B. "one quarter mile" is hereby replaced with "two miles".

1.2 Underground Injection Control Program - Criteria and Standards - 40 C.F.R. 146.4, 146.6, 146.7, 146.8, 146.12, 146.13(d), 146.14, 146.32, 146.34, 146.61,146.62, 146.63, 146.64, 146.65, 146.66, 146.67, 146.68, 146.69, 146.70, 146.71, 146.72, and 146.73, July 1, 2003 ed., are adopted and incorporated by reference with the following exceptions:

A. "Director" refers to the Director of the Division of Water Quality.

B. "one quarter (1/4) mile" and "one-fourth (1/4) mile" are each hereby replaced with "two miles".

1.3 Hazardous Waste Injection Restrictions - 40 C.F.R. Part 148, July 1, 2003 ed., is adopted and incorporated by reference with the exception that "Director" refers to the Director of the Division of Water Quality.

1.4 Identification and Listing of Hazardous Waste - 40 C.F.R. Part 261, July 1, 2003 ed., is adopted and incorporated by reference.

1.5 National Primary Drinking Water Regulations - 40 C.F.R. Part 141, July 1, 2003 ed., is adopted and incorporated by reference.

1.6 Guidelines Establishing Test Procedures for the Analysis of Pollutants - 40 C.F.R. Part 136 Table 1B, July 1, 2003 ed., is adopted and incorporated by reference.

1.7 Nuclear Regulatory Commission - Standards for Protection Against Radiation - 10 C.F.R. Part 20 Appendix B, Table 2 Column 2, January 1, 2003 ed., is adopted and incorporated by reference.

1.8 Procedures for Decision Making - 40 C.F.R. 124.3(a); 124.5(a), (c), (d) and (f); 124.6(a), (c), (d) and (e); 124.8; 124.10(a)(1)ii, iii, and (a)(1)(V); 124.10(b), (c), (d), and (e); 124.11; 124.12(a); and 124.17(a) and (c), July 1, 2003 ed., are adopted and incorporated by reference with the exception that "Director" refers to the Director of the Division of Water Quality is hereby replaced by "Executive Secretary".

R317-7-2. Definitions.

"Abandoned Well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.

"Application" means standard forms for applying for a permit, including any additions, revisions or modifications.

"Aquifer" means a geologic formation or any part thereof that is capable of yielding significant water to a well or spring.

"Area of Review" means the zone of endangering influence or fixed area radius determined in accordance with the provisions of 40 C.F.R. 146.6.

"Background Data" means the constituents or parameters and the concentrations or measurements which describe water quality and water quality variability prior to surface or subsurface discharge.

"Barrel" means 42 (U.S.) gallons at 60 degrees F and atmospheric pressure.

"Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

"Casing Pressure" means the pressure within the casing or between the casing and tubing at the wellhead.

"Catastrophic Collapse" means the sudden and utter failure of overlying "strata" caused by removal of underlying materials.

"Cementing" means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

"Cesspool" means a "drywell" that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

"Confining Bed" means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

"Confining Zone" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

"Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

"Conventional Mine" means an open pit or underground excavation for the production of minerals.

"Disposal Well" means a well used for the disposal of fluids into a subsurface stratum.

"Drilling Mud" means mud of not less than 36 viscosity (A.P.I. Full Funnel Method) and a weight of not less than nine pounds per gallon.

"Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

"Exempted Aquifer" means an aquifer or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures of 40 C.F.R. 144.7.

"Existing Injection Well" means an "injection well" other than a "new injection well."

"Experimental Technology" means a technology which has not been proven feasible under the conditions in which it is being tested.

"Fault" means a surface or zone of rock fracture along which there has been a displacement.

"Flow Rate" means the volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

"Fluid" means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

"Formation" means a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

"Formation Fluid" means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as drilling mud.

"Generator" means any person, by site location, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261.

"Groundwater" means water below the ground surface in a zone of saturation.

"Ground water protection area" refers to the drinking water source protection zones for ground water sources delineated by the Utah Division of Drinking Water according to Utah

Administrative Code R309-600 - Drinking Water Source Protection For Ground-Water Sources.

"Hazardous Waste" means a hazardous waste as defined in R315-2-3.

"Hazardous Waste Management Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

"Improved sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

"Injection Well" means a well into which fluids are being injected for subsurface emplacement of the fluids.

"Injection Zone" means a geological "formation," group of formations, or part of a formation receiving fluids through a well.

"Large underground domestic wastewater disposal system" means a large underground domestic wastewater disposal system (as defined in R317-1-1.16) for emplacing treated domestic wastewater into the subsurface and which is designed for a capacity of greater than 5,000 gallons per day

"Lithology" means the description of rocks on the basis of their physical and chemical characteristics.

"Monitoring Well" means a well used to measure groundwater levels and to obtain water samples for water quality analysis.

"New Injection Well" means an injection well which began injection after January 19, 1983.

"Packer" means a device lowered into a well to produce a fluid-tight seal within the casing.

"Plugging" means the act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

"Plugging Record" means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.

"Point of injection" means the last accessible sampling point prior to waste fluids being released into the subsurface environment through a Class V injection well. For example, the point of injection of a Class V septic system might be the distribution box - the last accessible sampling point before the waste fluids drain into the underlying soils. For a dry well, it is likely to be the well bore itself.

"Pressure" means the total load or force per unit area acting on a surface.

"Project" means a group of wells in a single operation.

"Professional Engineer" means any person qualified to practice engineering before the public in the state of Utah and professionally registered as required under the Professional Engineers and Professional Land Surveyors Licensing Act Rules (UAC R156-22).

"Professional Geologist" means any person qualified to practice geology before the public in the state of Utah and professionally registered as required under the Professional Geologist Licensing Act Rules (UAC R156-76).

"Radioactive Waste" means any waste which contains radioactive material in concentrations which exceed those listed in 10 C.F.R. Part 20, Appendix B, Table II Column 2.

"Sanitary waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.

"Septic system" means a "well" that is used to emplace sanitary waste below the surface and is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.

"Stratum" (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

"Subsidence" means the lowering of the natural land surface in response to earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

"Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

"Surface Casing" means the first string of well casing to be installed in the well.

"Total Dissolved Solids (TDS)" means the total residue (filterable) as determined by use of the method specified in 40 C.F.R. Part 136 Table 1B.

"Transferee" means the owner or operator receiving ownership and/or operational control of the well.

"Transferor" means the owner or operator transferring ownership and/or operational control of the well.

"Underground Injection" means a "well injection".

"Underground Sources of Drinking Water (USDW)" means an aquifer or its portion which:

A. Supplies any public water system, or which contains a sufficient quantity of ground water to supply a public water system; and

1. currently supplies drinking water for human consumption; or

2. contains fewer than 10,000 mg/l total dissolved solids (TDS); and

B. is not an exempted aquifer. (See Section 7-4).

"Well" means a bored, drilled or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or an improved sinkhole; or a subsurface fluid distribution system.

"Well Injection" means the subsurface emplacement of fluids through a well.

"Well Monitoring" means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.

"Well Plug" means a watertight and gas-tight seal installed in a borehole or well to prevent movement of fluids.

"Well Stimulation" means several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, and includes:

(1) surging;
(2) jetting;
(3) blasting;
(4) acidizing; and
(5) hydraulic fracturing.

R317-7-3. Classification of Injection Wells.

Injection wells are classified as follows:

3.1 Class I

A. Hazardous Waste Injection Wells: wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within two miles of the well bore, an underground source of drinking water;

B. Nonhazardous Injection Wells: other industrial and municipal waste disposal wells which inject nonhazardous fluids beneath the lowermost formation containing, within two miles of the well bore, an underground source of drinking water; this category includes disposal wells operated in conjunction with uranium mining activities.

C. Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within two miles of the well bore.

3.2 Class II. Wells which inject fluids:

A. which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with wastewaters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

B. for enhanced recovery of oil or natural gas; and

C. for storage of hydrocarbons which are liquid at standard temperature and pressure.

Class II injection wells are regulated by the Division of Oil, Gas and Mining under Oil and Gas Conservation General Rules, R649-5.

3.3 Class III. Wells which inject for extraction of minerals, including:

A. mining of sulfur by the Frasch process;

B. in situ production of uranium or other metals. This category includes only in situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V; and

C. solution mining of salts or potash.

3.4 Class IV

A. Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into a formation which, within two miles of the well, contains an underground source of drinking water;

B. wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes above a formation which, within two miles of the well, contains an underground source of drinking water;

C. wells used by generators of hazardous wastes or by owners or operators of hazardous waste management facilities, to dispose of hazardous wastes which cannot be classified under Section 7-3.1(A) or 7-3.4(A) and (B) of these rules (e.g. wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been exempted).

3.5 Class V. Injection wells not included in Classes I, II, III, or IV. Class V wells include:

A. air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;

B. large capacity cesspools, including multiple dwelling, community or regional cesspools, or other devices that receive untreated sanitary wastes, containing human excreta, which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have a design flow rate of less than or equal to 5,000 gallons per day;

C. cooling water return flow wells used to inject water previously used for cooling;

D. drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

E. dry wells used for the injection of wastes into a subsurface formation;

F. recharge wells used to replenish the water in an aquifer;

G. salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;

H. sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines, whether what is injected is radioactive waste or not;

I. large underground domestic wastewater disposal systems (as defined in R317-1-1.16) used to inject effluent from a domestic wastewater treatment system associated with a multiple family dwelling, business establishment, community, or regional business establishment. The UIC requirements do not apply to single family residential onsite wastewater systems (as defined in R317-1-1.13), nor to non-residential onsite wastewater systems which are used solely for the disposal of treated domestic waste and have a design flow rate of less than or equal to 5,000 gallons per day. Any subsurface fluid distribution system or other type of injection well designed for any flow rate and used to dispose of industrial wastewater is not an underground wastewater disposal system as defined by R317-1-1.32.

J. subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

K. stopes leaching, geothermal and experimental wells;

L. brine disposal wells for halogen recovery processes;

M. injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electric power; and

N. injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.

O. motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (MCLs) established by the primary drinking water rules (see 40 CFR Part 141 and Utah Primary Drinking Water Standards R309-200-5). These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health.

R317-7-4. Identification of USDW'S and Exempted Aquifers.

The Director shall identify USDW's and exempt aquifers following the procedures and based on the requirements outlined in 40 C.F.R. 144.7 and 40 C.F.R. 146.4.

R317-7-5. Prohibition of Unauthorized Injection.

5.1 Any underground injection is prohibited except as authorized by permit or as allowed under these rules.

5.2 No authorization by permit or by these rules for underground injection shall be construed to authorize or permit any underground injection which endangers a drinking water source.

5.3 Underground injections are prohibited which would allow movement of fluid containing any contaminant into underground sources of drinking water if the presence of that contaminant may cause a violation of any primary drinking

water regulation (40 C.F.R. Part 141 and Utah Primary Drinking Water Standards R309-200-5), or which may adversely affect the health of persons. Underground injections shall not be authorized if they may cause a violation of any ground water quality rules that may be promulgated by the Utah Water Quality Board. Any applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

5.4 For Class I and III wells, if any monitoring indicates the movement of injection or formation fluids into underground sources of drinking water, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting, including closure of the injection well, as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit or the permit may be terminated, or appropriate enforcement action may be taken if the permit has been violated.

5.5 For Class V wells, if at any time the Director determines that a Class V well may cause a violation of primary drinking water rules under R309-200, the Director shall:

A. require the injector to obtain an individual permit;

B. order the injector to take such actions, including closure of the injection well, as may be necessary to prevent the violation; or

C. take appropriate enforcement action.

5.6 Whenever the Director determines that a Class V well may be otherwise adversely affecting the health of persons, the Director may require such actions as may be necessary to prevent the adverse effect.

5.7 Class IV Wells

A. Prohibitions. The construction, operation or maintenance of any Class IV well is prohibited except as specified in 40 C.F.R. 144.13 (c) and 144.23(c) as limited by the definition of Class IV wells in Section 7-3.4 of these rules.

B. Plugging and abandonment requirements. Prior to abandoning a Class IV well, the owner or operator shall close the well in a manner acceptable to the Director. At least 30 days prior to abandoning a Class IV well, the owner or operator shall notify the Director of the intent to abandon the well.

5.8 Notwithstanding any other provision of this section, the Director may take emergency action upon receipt of information that a contaminant which is present in, or is likely to enter a public water system, may present an imminent and substantial endangerment to the health of persons.

5.9 Records. The Director may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with these rules.

R317-7-6. Permit and Compliance Requirements - New and Existing Wells.

6.1 The owner or operator of any new injection well is required to obtain a permit from the Director prior to construction unless excepted by R317-7-6.3. Compliance with construction plans and standards is required prior to commencing injection operations. Changes in construction plans require approval of the Director.

6.2 Owners or operators of existing underground injection wells are required to obtain a permit from the Director unless specifically excepted by Section 7-6.3 of these rules.

6.3

A. Existing and new Class V injection wells are authorized by rule, subject to the conditions in Section 7-6.5 of these rules.

B. Well authorization under this Section 7-6.3 expires upon the effective date of a permit issued in accordance with these rules or upon proper closure of the well.

C. An owner or operator of a well which is authorized by rule under this Section 7-6.3 is prohibited from injecting into the well:

1. Upon the effective date of a permit denial.

2. Upon failure to submit a permit application in a timely manner if requested by the Director under Section 7-6.4 of these rules.

3. Upon failure to submit inventory information in a timely manner in accordance with Section 7-6.4(C) of these rules.

6.4

A. The Director may require any owner or operator of a Class I, III or V well authorized under Section 7-6.3 to apply for and obtain an individual or area permit. Cases where permits may be required include:

1. The injection well is not in compliance with the applicable rules.

2. The injection well is not or no longer is within the category of wells and types of well operations authorized by Section 7-6.3.

3. Protection of an USDW.

B. Any owner or operator authorized under Section 7-6.3 may request a permit and hence be excluded from coverage under Section 7-6.3.

C. Owners or operators of all injection wells regulated by Section 7-6.3 shall submit the following inventory information to the Director:

1. facility name and location;
2. name and address of legal contact;
3. ownership of facility;
4. nature and type of injection wells; and
5. operating status of injection wells.

Inventory information shall be submitted no later than January 19, 1984 for existing injection wells and before injection begins for new injection wells.

6.5 Additional requirements for large-capacity cesspools and motor vehicle waste disposal wells (see Class V well descriptions in Sections 7-3.5(B) and 7-3.5(O), respectively).

A. All existing large-capacity cesspools (operational or under construction by April 5, 2000) must close by April 5, 2005. See closure requirements in Section 7-6.6.

B. All new or converted large-capacity cesspools (construction not started before April 5, 2000) are prohibited.

C. All existing motor vehicle waste disposal wells (operational or under construction by April 5, 2000) must either be closed or their owners or operators must obtain a UIC permit.

1. For those wells located within a ground water protection area as designated by the Utah Division of Drinking Water (DDW), closure or permit application submittal must take place within one year of completion of DDW's ground water protection area assessment for the pertinent area.

2. All motor vehicle waste disposal wells statewide located outside a ground water protection area must either be closed or their owners or operators must submit a UIC permit application by January 1, 2007.

3. If well closure is the option chosen, the closure requirements in Section 7-6.6 must be followed. The closure deadline may be extended by the Director for up to one year under certain conditions, such as intent to connect to a sanitary sewer.

4. If obtaining a UIC permit is the option chosen, Utah Drinking Water Maximum Contaminant Levels (MCL's), Utah Ground Water Quality Standards, and EPA Adult Lifetime Health Advisories must be met at the point of injection while the permit application is under review. These standards must also be met at the point of injection under the terms of the permit, when issued. Utah Ground Water Protection Levels may be required to be met at downgradient ground water monitoring wells, if required to be installed. Such a permit may require pretreatment of the wastewater, and will require adherence to best management practices and monitoring of the

quality of the injectate and any sludge generated.

D. All new or converted motor vehicle waste disposal wells (construction not started before April 5, 2000) are prohibited.

6.6 Class V well plugging and abandonment requirements.

A. Prior to abandoning a Class V well, the owner or operator shall close the well in a manner that prevents the movement of fluid containing any contaminant into an underground source of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 141 or Utah Primary Drinking Water Standards R309-200-5, or may otherwise adversely affect the health of persons.

B. The owner or operator shall dispose of or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well in accordance with all applicable Federal, State, and local regulations and requirements.

C. The owner or operator must notify the Director of intent to close the well at least 30 days prior to closure.

6.7 Conversion of motor vehicle waste disposal wells. In limited cases, the Director may authorize the conversion (reclassification) of a motor vehicle waste disposal well to another type of Class V well. Motor vehicle wells may only be converted if: all motor vehicle fluids are segregated by physical barriers and are not allowed to enter the well; and, injection of motor vehicle waste is unlikely based on a facility's compliance history and records showing proper waste disposal. The use of a semi-permanent plug as the means to segregate waste is not sufficient to convert a motor vehicle waste disposal well to another type of Class V well.

6.8 Time for Application for Permit. Any person who performs or proposes an underground injection for which a permit is or will be required shall submit a complete application to the Director in accordance with Section 7-9 a reasonable time before construction is expected to begin, except for new wells covered by an existing area permit.

6.9 All applications for a Utah UIC permit, including any required Technical Report that addresses the technical requirements of R317-7-10 or R317-7-11, any technical information necessary for the adequate evaluation of any permit application, or any permit renewal applications and Technical Reports that are significantly different from the original permit application, must be prepared by or under the direction, and bear the seal, of a professional geologist or professional engineer.

R317-7-7. Area Permits.

A. The Director may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:

1. described and identified by location in permit application, if they are existing wells, except that the Director may accept a single description of wells with substantially the same characteristics;

2. within the same well field, facility site, reservoir, project, or similar unit in the State;

3. operated by a single owner or operator; and

4. used to inject other than hazardous waste.

B. Area permits shall specify:

1. the area within which underground injections are authorized; and

2. the requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

C. The area permit may authorize the permittee to construct and operate, convert, or plug and abandon injection wells within the permit area provided that:

1. the permittee notifies the Director at such time as the permit requires, when and where the new well has been or will be located;

2. the additional well meets the area permit criteria; and

3. the cumulative effects of drilling and operation of additional injection wells are considered by the Director during evaluation of the area permit application and are acceptable to the Director.

D. If the Director determines that any additional well does not meet the area permit requirements, the Director may modify or terminate the permit or take appropriate enforcement action.

E. If the Director determines the cumulative effects are unacceptable, the permit may be modified.

F. The requirements of R317-7-6.9 apply to area permits.

R317-7-8. Emergency Permits.

A. Notwithstanding any provision in this Part 7, the Director is authorized to issue emergency permits for specific underground injections provided the conditions and requirements of 40 C.F.R. 144.34 are met.

B. The requirements of R317-7-6.9 apply to emergency permits.

R317-7-9. Permitting Procedures and Conditions.

9.1 Application for a Permit

A. Any person who is required to have a permit shall complete, sign and submit an application to the Director.

B. When the owner and operator are different, it is the operator's duty to obtain a permit.

C. The application must be complete before the permit is issued.

D. All applicants shall provide the following information:

1. activities conducted by the applicant which require a permit;

2. name, mailing address and location of facility;

3. up to four Standard Industrial Code (SIC) codes which best reflect the principal products or services provided;

4. operator's name, address, telephone number, ownership status, and status as Federal, State, private, public or other entity;

5. whether the facility is located on Indian lands;

6. list of State and Federal environmental permits or construction approvals received or applied for and other relevant environmental permits;

7. topographic map (or other map if the topographic map is unavailable) extending one mile beyond the property boundary; depicting the facility and its intake and discharge structures, any hazardous waste, treatment, storage and disposal facilities; each injection well; and wells, springs, surface water bodies, and drinking water wells listed in public records or otherwise known;

8. a brief description of the nature of the business;

9. a map showing the injection well for which a permit is sought and the applicable area of review. Within the area of review, the map must show a number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines, (surface and subsurface), quarries, water wells and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

10. a tabulation of data on all wells within the area of review which penetrates into the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, any available water quality data, and any additional information the Director may require;

11. maps and cross sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each

underground source of drinking water which may be affected by the proposed injection;

12. maps and cross sections detailing the geologic structure and lithology of the local area;

13. generalized maps and cross sections illustrating the regional geologic and hydrologic setting;

14. proposed operating data:

(a) average and maximum daily rate and volume of the fluid to be injected;

(b) average and maximum injection pressure; and

(c) source and an appropriate analysis of the chemical, physical, radiological and biological characteristics of injection fluids;

15. proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the receiving formation;

16. proposed stimulation program;

17. proposed injection procedure;

18. schematic or other appropriate drawings of the surface and subsurface construction details of the system;

19. contingency plans to cope with all shut-ins or well failures to prevent migration of fluids into any underground source of drinking water;

20. plans (including maps) for meeting the monitoring requirements;

21. for wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken;

22. construction procedures, as follows:

(a) For Class I Nonhazardous Wells: a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program, which comply with Section 7-10.1(A) or 40 C.F.R. 146.12;

(b) For Class I Hazardous Waste Wells: cementing and casing program, well materials specifications and their life expectancy, logging procedures, deviation checks, and a drilling, testing and coring program, which comply with 40 C.F.R. 146.65 and 146.66;

(c) For Class III wells: cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program, which comply with section 7-10.1(B) or 40 C.F.R. 146.32.

23. A plan for plugging and abandoning the well, as follows:

(a) Class I Nonhazardous Well plans shall include information required by 40 C.F.R. 146.14(c) and Section 7-10.5 of these rules;

(b) Class I Hazardous Waste Well plans shall include information required by 40 C.F.R. 146.71(a)(4) and 146.72(a);

(c) Class III well plans shall include information required by 40 C.F.R. 146.34(c) and Section 7-10.5 of these rules.

24. A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well. Class I Hazardous Waste wells shall also demonstrate financial responsibility pursuant to 40 C.F.R. 144.60 through 144.70;

25. such other information as may be required by the Director.

9.2 Applicants shall keep records of all data used to complete permit applications and supplemental information for at least three years from the date of permit approval.

9.3 Permit applications and reports required under these rules shall be signed in accordance with 40 C.F.R. Section 144.32.

9.4 Permit Provisions, Conditions and Schedules of Compliance.

Any permit issued by the Director is subject to the conditions and requirements and shall be issued in accordance with the procedures outlined in 40 C.F.R. 144.51 (a)-(o) and (q), 144.52, 144.53, 144.54, 144.55 and 146.7, and 40 C.F.R. 124.3(a), 124.5(a),(c),(d) and (f), 124.6(a),(c),(d) and (e), 124.8, 124.10(a)(1)ii, and iii, (a)(1)(v), 124.10(b),(c),(d) and (e), 124.11, 124.12(a) and 124.17(a) and (c). The permit may specify schedules of compliance which require compliance not later than three years after the effective date of the permit.

9.5 Duration of Permits. Permits for Class I and Class V wells shall be effective for a fixed term not to exceed ten years. Permits for Class III wells shall be issued for a period up to the operating life of the facility. Each issued Class III well permit shall be reviewed by the Director at least once every five years to determine whether it should be modified, revoked and reissued, or terminated. The Director may issue any permit for a duration that is less than the full allowable term under this section.

9.6 Transfer, Modification, and Termination. Permits may be transferred, modified, revoked, reissued, or terminated by the Director under the conditions and following the procedures outlined in 40 C.F.R. 144.36, 144.38, 144.39, 144.40, and 144.41.

9.7 Confidentiality of Information. The following information when submitted as required by these rules cannot be claimed confidential:

A. name and address of permit applicant or permittee; and

B. information which deals with the existence, absence or level of contaminants in drinking water.

9.8 Waivers of Requirements

A. The Director may waive the requirements of these rules only under the conditions and circumstances outlined in 40 C.F.R. Section 144.16.

B. The "two mile" distance provisions in Sections 7-3.1(B), 7-3.4, 7-10.1(A)(1), and 7-11 of these rules may be reduced by the Director on a case-by-case basis to less than two miles but in no event to less than 1/4 mile upon a finding by the Director that the distance reduction will not pose a threat to any USDW. The burden shall be on the applicant to demonstrate that hydrogeologic conditions, ground water quality in the area, and other environmental studies and information support the finding.

R317-7-10. Technical Requirements for Class I Nonhazardous and Class III Wells.

10.1 Construction Requirements

A. Class I Nonhazardous Well Construction Requirements

1. All Class I Nonhazardous wells as defined in Section 7-3.1(B) shall be sited so they inject beneath the lowermost formation containing, within two miles of the well bore, an USDW.

2. All Class I Nonhazardous wells shall be cased and cemented to prevent the movement of fluids into or between USDW's. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements the following factors shall be considered:

a. depth to the injection zone;

b. injection pressure, external pressure, internal pressure, and axial loading;

c. hole size;

d. size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

e. corrosiveness of injected fluid, formation fluids, and temperatures;

f. lithology of injection and confining intervals; and

g. type or grade of cement.

3. All Class I Nonhazardous injection wells (except for municipal wells injecting noncorrosive wastes) shall inject

through tubing with a packer set immediately above the injection zone or tubing with an approved fluid seal. Alternatives may be used with the written approval of the Director if they provide a comparable level of protection.

The following factors shall be considered in determining and specifying requirements for tubing, packer or alternatives:

a. depth of setting;
b. characteristics of injected fluid;
c. injection pressure;
d. annular pressure;
e. rate, temperature and volume of injected fluid; and
f. size of casing.

4. Appropriate logs and other tests shall be conducted during the drilling and construction of new wells and a descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the Director. At a minimum, such logs and tests shall include:

a. deviation checks on holes constructed by drilling a pilot hole, and then enlarging the pilot hole;

b. Such other logs and tests as may be required by the Director. In determining which logs and tests shall be required, the following shall be considered for use in the following situations:

(1) for surface casing intended to protect USDW's:

(a) electric and caliper logs (before casing is installed);

(b) cement bond, temperature or density log (after casing is set and cemented);

(2) for intermediate and long strings of casing intended to facilitate injection:

(a) electric, porosity and gamma ray logs (before casing is installed);

(b) fracture finder logs;

(c) cement bond, temperature or density log (after casing is set and cemented).

5. At a minimum, the following information concerning the injection formation shall be determined or calculated for new wells:

a. fluid pressure;
b. temperature;
c. fracture pressure;
d. physical and chemical characteristics of the injection matrix; and
e. physical and chemical characteristics of the formation fluids.

B. Class III Construction Requirements

1. All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between underground sources of drinking water. The Director may waive the cementing requirement for new wells in existing projects or portions of existing projects where he has substantial evidence that no contamination of underground sources or drinking water would result. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

a. depth to the injection zone;
b. injection pressure, external pressure, internal pressure, and axial loading;
c. hole size;
d. size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);
e. corrosiveness of injected fluids and formation fluids;
f. lithology of injection and confining zones; and
g. type and grade of cement.

2. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the Director. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site, and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks shall be conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

3. Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:

a. fluid pressure;
b. fracture pressure; and
c. physical and chemical characteristics of the formation fluids.

4. Where the injection zone is not a water bearing formation, only the fracture pressure must be submitted.

5. Where injection is into a formation which contains water with less than 10,000 mg/l TDS, monitoring wells shall be completed into the injection zone and into any USDW above the injection zone.

6. Where injection is into a formation which does not contain water with less than 10,000 mg/l TDS, no monitoring wells are necessary in the injection stratum.

7. Where the injection wells penetrate an USDW in a area subject to subsidence or catastrophic collapse, an adequate number of monitoring wells shall be completed into the USDW.

10.2 Operation Requirements

A. For Class I Nonhazardous and Class III wells it is required that:

1. Except during stimulation, the injection pressure at the wellhead shall not exceed a maximum which shall be calculated to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall the injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an USDW.

2. Injection between the outermost casing protecting USDW's and the well bore is prohibited.

B. For Class I Nonhazardous wells, unless an alternative to tubing and packer has been approved, the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Director and a pressure approved by the Director shall be maintained on the annulus.

10.3 Monitoring. The permittee shall identify types of tests and methods used to generate the monitoring data:

A. Class I Nonhazardous well monitoring shall, at a minimum, include:

1. the analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;

2. installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between tubing and the long string of casing;

3. a demonstration of mechanical integrity pursuant to 40 C.F.R. 146.8 at least once every five years during the life of the well; and

4. the type, number and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the USDW, the parameters to be measured and the frequency of monitoring.

5. Ambient monitoring requirements for Class I Nonhazardous wells found in 40 C.F.R. 146.13(d).

B. Class III monitoring shall, at a minimum, include:

1. the analyses of the physical and chemical characteristics of the injected fluid with sufficient frequency to yield representative data on its characteristics;

2. monitoring of injection pressure and either flow rate or volume semi- monthly, or metering and daily recording of injected and produced fluid volumes as appropriate;

3. demonstration of mechanical integrity pursuant to 40 C.F.R. 146.8 at least once every five years during the life of the well for salt solution mining;

4. monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by Section 7-10.2 of these rules, semi-monthly;

5. quarterly monitoring of wells required by Section 7-10.1(B)(7).

6. All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required, provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

7. In determining the number, location, construction and frequency of monitoring of the monitoring wells, the criteria in 40 C.F.R. 146.32(h) shall be considered.

10.4 Reporting Requirements

A. For Class I Nonhazardous injection wells reporting shall, at a minimum, include:

1. quarterly reports to the Director on:

a. the physical, chemical and other relevant characteristics of injection fluids;

b. monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and

c. the results of monitoring of wells in the area of review.

2. Reporting the results, with the first quarterly report after the completion of:

a. periodic tests of mechanical integrity;

b. any other test of the injection well conducted by the permittee if required by the Director; and

c. any well work over.

B. For Class III injection wells reporting shall, at a minimum, include:

1. quarterly reporting to the Director on required monitoring;

2. results of mechanical integrity and any other periodic test required by the Director reported with the first regular quarterly report after the completion of the test; and

3. monitoring may be reported on a project or field basis rather than individual well basis where manifold monitoring is used.

10.5 Plugging and Abandonment Requirements

A. Prior to abandoning Class I Nonhazardous and Class III wells, the well shall be plugged with cement in a manner which will not allow the movement of fluid either into or between underground sources of drinking water. The Director may allow Class III wells to use other plugging materials if he is satisfied that such materials will prevent movement of fluids into or between underground sources of drinking water.

B. Placement of the cement plugs shall be accomplished by one of the following:

1. the Balance Method;

2. the Dump Bailer Method;

3. the Two-Plug Method; or

4. an alternative method approved by the Director which will reliably provide a comparable level of protection to USDW's.

C. The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once, or by a comparable method prescribed by the Director, prior to the placement of the cement plug.

D. The plugging and abandonment plan required in Section 7-9 shall, in the case of a Class III well field which underlies or is in an aquifer which has been exempted, also demonstrate adequate protection of USDW's. The Director shall prescribe aquifer cleanup and monitoring where he deems it necessary and feasible to insure adequate protection of USDW's.

10.6 Information to be Considered by the Director. Requirements for information from well owners or operators and evaluations by the Director for the issuance of permits, approval of well operation or well plugging and abandonment of Class I Nonhazardous injection wells are found in 40 C.F.R. 146.14 and Class III injection wells are found in 40 C.F.R. 146.34.

R317-7-11. Technical Requirements for Class I Hazardous Waste Injection Wells.

11.1 Applicability. Statements of applicability and definitions are described in 40 C.F.R. 146.61.

11.2 Minimum Siting Criteria. Minimum siting requirements for Class I hazardous waste wells are described in 40 C.F.R. 146.62.

11.3 Area of Review. The area of review is defined for Class I hazardous waste injection wells in 40 C.F.R. 146.63.

11.4 Corrective Action for Wells in the Area of Review. Corrective action requirements for wells found within the area of review are located in 40 C.F.R. 146.64.

11.5 Construction Requirements. Construction requirements for all Class I hazardous waste injection wells are found in 40 C.F.R. 146.65.

11.6 Logging, Sampling, and Testing Prior to New Well Operation. Pre-operation requirements for logging, sampling, and testing of new wells are found in 40 C.F.R. 146.66.

11.7 Operating Requirements. Operation requirements for Class I hazardous waste injection wells are found in 40 C.F.R. 146.67.

11.8 Testing and Monitoring Requirements. Testing and monitoring requirements are found in 40 C.F.R. 146.68.

11.9 Reporting Requirements. Reporting requirements are found in 40 C.F.R. 146.69.

11.10 Information to be Evaluated by the Director. Requirements for information from well owners or operators and evaluations by the Director for the issuance of permits, approval of well operation or well plugging and abandonment are found in 40 C.F.R. 146.70.

11.11 Closure. Well closure requirements are found in 40 C.F.R. 146.71.

11.12 Post-closure Care. Post-closure care requirements for Class I hazardous waste injection wells and facilities are found in 40 C.F.R. 146.72.

11.13 Financial Responsibility for Post-closure Care. Financial responsibility requirements for care of a Class I hazardous waste injection well during post-closure are found in 40 C.F.R. 146.73.

11.14 Requirements for Wells Injecting Hazardous Waste. Requirements for injection of waste accompanied by a manifest are found in 40 C.F.R. 144.14.

R317-7-12. Hazardous Waste Injection Restrictions.

12.1 Purpose, Scope, and Applicability. Standards are found in 40 C.F.R. 148.1.

12.2 Definitions. Definitions are found in 40 C.F.R. 148.2.

12.3 Dilution Prohibited as a Substitute for Treatment. The prohibition is found in 40 C.F.R. 148.3.

12.4 Procedures for Case-by-case Extensions to an

Effective Date. Requirements are found in 40 C.F.R. 148.4.

12.5 Waste Analysis. Requirements are found in 40 C.F.R. 148.5.

12.6 Waste Specific Prohibitions - Solvent Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.10.

12.7 Waste Specific Prohibitions - Dioxin - Containing Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.11.

12.8 Waste Specific Prohibitions - California List Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.12.

12.9 Waste Specific Prohibitions - First Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.14.

12.10 Waste Specific Prohibitions - Second Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.15.

12.11 Waste Specific Prohibitions - Third Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.16.

12.12 Waste Specific Prohibitions - Newly Listed Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.17.

12.13 Petitions to Allow Injection of a Waste Prohibited Under Sections 7.11 and 7.12. Requirements for petitions to allow injection of prohibited wastes are found in 40 C.F.R. 148.20.

12.14 Information to be Submitted in Support of Petitions. Requirements are found in 40 C.F.R. 148.21.

12.15 Requirements for Petition Submission, Review and Approval or Denial. Requirements are found in 40 C.F.R. 148.22.

12.16 Review of Exemptions Granted Pursuant to a Petition. Requirements are found in 40 C.F.R. 148.23.

12.17 Termination of Approved Petition. Petition termination requirements are found in 40 C.F.R. 148.24.

R317-7-13. Public Participation.

The Division will investigate and provide written response to all citizen complaints duly submitted. In addition, the Director shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute or rule. The Director will publish notice of and provide at least thirty (30) days of public comment on any proposed settlement of any enforcement action.

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R357. Governor, Economic Development.
R357-7. Utah Capital Investment Board.
R357-7-1. Purpose.

(1) The purpose of these rules is to establish criteria and procedures for the allocation and issuance of contingent tax credits by the Board.

R357-7-2. Authority.

(1) U.C.A. Sections 63N-6-203, 63N-6-401, 63N-6-406 and 63N-6-408 require the Board to:

(a) Make rules establishing the manner by which it allocates, issues, calculates, certifies and provides for the application for, transfer and redemption of, contingent tax credits;

(b) Establish criteria and procedures for assessing the likelihood of future certificate redemptions by designated investors; and

(c) Set a target rate of return or range of returns for the investment portfolio of the Utah Fund of Funds.

R357-7-3. Definitions.

(1) "Accredited Investor" has the same meaning as under the U.S. Securities Act of 1933, as amended, including the rules promulgated thereunder.

(2) "Act" means the Utah Venture Capital Enhancement Act, U.C.A. Section 63N-6-101 et seq.

(3) "Actual Return" means the actual aggregate amount of cash or cash equivalents and the fair market value of property received from a Utah Fund of Funds with respect to a Private Investment, including amounts received as returns of contributed capital or returns on capital contributions and amounts received in excess of capital contributed, in whatever form received.

(4) "Annual Report" means the annual report of the activities conducted by the Utah Fund of Funds that is published by the Corporation, in consultation with the Board in accordance with U.C.A. Section 63N-6-301(6).

(5) "Auditor" means the Person that conducts the annual audit made in accordance with U.C.A. Section 63N-6-405.

(6) "Board" means the Utah Capital Investment Board, established in accordance with U.C.A. Section 63N-6-201.

(7) "Business Day" means any day other than a Saturday, Sunday, or a day on which banking institutions located in Salt Lake City, Utah are authorized by law to be closed.

(8) "Calendar Year" means, with respect to any date or event, the actual calendar year in which such date or event occurs.

(9) "Capital Invested" means the actual aggregate amount of cash or cash equivalents and the fair market value of property contributed with respect to a Private Investment in a Utah Fund of Funds, including capital contributions made by and distributions returned to such Utah Fund of Funds in accordance with the terms of the limited partnership agreement or operating agreement of the Utah Fund of Funds.

(10) "Certificate" means a "certificate" within the meaning of U.C.A. Section 63N-6-103(2).

(11) "Certificate of Eligibility" means a certificate issued in accordance with section 3 of R357-7-6 to a Designated Investor.

(12) "Certificate Register" means the register maintained by the Board recording the name, address and taxpayer identification number of each Designated Investor and all transactions involving Certificates, Certificates of Eligibility, Tax Credit Redemption Certificates and Tax Credit Balance Certificates, including the maximum amount of tax credits represented by each certificate issued or Transferred to such Designated Investor.

(13) "Certification" means (i) with respect to a Certificate for contingent tax credits, the process by which the Board certifies the amount of tax credits the Designated Investor is entitled to receive in accordance with R357-7-4 or R357-7-5 as applicable, and (ii) with respect to a Certificate of Eligibility or Tax Credit Balance Certificate, the process by which the Board certifies the amount of tax credits a Designated Investor is entitled to receive upon application in accordance with R357-7-6.

(14) "Commission" means the Utah State Tax Commission.

(15) "Corporation" means Utah Capital Investment Corporation, established in accordance with U.C.A. Section 63N-6-301.

(16) "Closing" means the date of acceptance of a Designated Investor's capital commitment and admission of such Designated Investor as a limited partner or member, as applicable, in a Utah Fund of Funds.

(17) "Debt-based Refinancing" means a Private Investment structured as a loan to a Utah Fund of Funds that is used to repay all or a portion of the outstanding principal, premium or interest of an existing loan to such Utah Fund of Funds that was originated before July 1, 2014 or the modification of the terms of such an existing loan in accordance with U.C.A. Section 63N-6-406(2)(e).

(18) "Designated Investor" means (a) a Person who makes a Private Investment to whom a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate is issued, and (b) such Person's successor as a matter of law. A Transferee of a Designated Investor shall succeed to the rights of a Designated Investor with respect to a Certificate, Certification of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate to the extent such rights are Transferred in accordance with R357-7-7 and upon such Transfer shall be a Designated Investor for purposes of these rules.

(19) "Designated Purchaser" means a "designated purchaser" within the meaning of U.C.A. Section 63N-6-103(8).

(20) "Determination Date" means, with respect to each Utah Fund of Funds, December 31 of the Calendar Year in which the Term of such Utah Fund of Funds expires.

(21) "Economic Development Impact" means the dollar amount determined by the Board in accordance with R357-7-9.

(22) "Equity-based Refinancing" means a Private Investment structured as equity in a Utah Fund of Funds that is used to repay all or a portion of the outstanding principal, premium or interest of an existing loan made to such Utah Fund of Funds that was originated before July 1, 2014 in accordance with U.C.A. Section 63N-6-406(2)(e).

(23) "Feeder Fund" means a Designated Investor that is an investment fund, the principal purpose of which is to make a Private Investment in a Utah Fund of Funds and for which the Corporation serves as manager, general partner, or investment manager at the time of such Private Investment. A Feeder Fund may be organized in a jurisdiction other than the state of Utah.

(24) "Fiscal Year" means the fiscal year as established in U.C.A. Section 51-7-3.5.

(25) "Maturity Date" means the date specified in a Certificate, representing the earliest date such Certificate may be presented to the Board for Certification.

(26) "Person" means an individual, partnership, limited liability company, corporation, association, organization, business trust, estate, trust or any other legal or commercial entity.

(27) "Private Investment" means a "private investment" within the meaning of U.C.A. Section 63N-6-103(11).

(28) "Redemption" means the presentation of a certified tax credit to the Commission for payment in accordance with U.C.A. Section 63N-6-408.

(29) "Redemption Reserve" means the "redemption reserve" within the meaning of U.C.A. Section 63N-6-103(12).

(30) "Scheduled Return" means the scheduled return, whether in cash, cash equivalents or other property (including returns of and returns on investment), with respect to a Private Investment as set forth in a Certificate for the period from the date of the Closing for such Private Investment to the applicable Maturity Date.

(31) "Shortfall" means the amount, if any, equal to the amount by which the Capital Invested with respect to a Private Investment in a Utah Fund of Funds exceeds the Actual Return received with respect to such Private Investment.

(32) "Target Rate of Return" means the target rate of return established by the Board in accordance with R357-7-10.

(33) "Tax Credit Balance Certificate" means a certificate issued in accordance with sections 8 or 11 of R357-7-6.

(34) "Tax Credit Eligibility" means the amount of tax credits a Designated Investor is entitled to apply for in accordance with sections 6 and 7 of R357-7-6.

(35) "Tax Credit Redemption Certificate" means a certificate issued by the Board representing a tax credit that may be claimed by a Designated Investor in accordance with U.C.A. Section 63N-6-408(4).

(36) "Term" means the period of the term of a Utah Fund of Funds prior to the commencement of its dissolution and winding up, as specified in the applicable Utah Fund of Funds operating agreement or limited partnership agreement, including any early termination or extension of such term.

(37) "Transfer" means the transfer, assignment or encumbrance of a Designated Investor's interest in a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, made in accordance with R357-7-7.

(38) "Transferee" means the Person to whom a Designated Investor Transfers its interest in a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, in accordance with R357-7-7.

(39) "Transferor" means the Designated Investor that is Transferring its interest in a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, in accordance with R357-7-7.

(40) "Utah-based Investment Fund" means a private investment fund, whose principal office is maintained in the state of Utah.

(41) "Utah-based Operating Company" means an operating company, the principal executive office of which is located in the state of Utah, or that employs more than 50% of its employees in the state of Utah.

(42) "Utah Fund of Funds" means any limited partnership or limited liability company established in accordance with U.C.A. Section 63N-6-401 in which a Designated Investor makes a Private Investment. There may be more than one Utah Fund of Funds.

R357-7-4. Procedure for the Issuance, Certification and Redemption of Tax Credits for Debt-based Refinancing Transactions.

This R357-7-4 applies to the Debt-based Refinancing of existing loans to a Utah Fund of Funds that were entered into prior to July 1, 2014 even if the refinancing occurs after July 1, 2015.

(1) No later than 20 Business Days prior to each Closing of a Debt-based Refinancing, the Corporation shall provide the following information to the Board:

(a) A summary of the terms of the loan instrument(s) and other contractual agreements to be entered into by the Utah Fund of Funds or the Corporation in connection with the Debt-based Refinancing; and

(b) The anticipated Closing date.

(2) No later than two Business Days prior to each Closing of a Debt-based Refinancing, the Corporation shall provide the following information to the Board for each Person expected to become a Designated Investor at Closing:

(a) Name of the Designated Investor;

(b) Evidence that the Designated Investor is an Accredited Investor;

(c) The Designated Investor's address and taxpayer identification number;

(d) The aggregate principal amount of loans expected to be made at such Closing by such Designated Investor;

(e) The method of determining the scheduled principal and interest payments applicable to such Debt-based Refinancing;

(f) The Scheduled Return for the Designated Investor applicable to such Debt-based Refinancing.

(g) The maximum amount of contingent tax credits to be certified for each Certificate to be issued at Closing;

(h) The Maturity Date or Maturity Dates for each Certificate to be issued at Closing; and

(i) All of the requested contingencies to be applicable to the contingent tax credits to which such Certificate relates.

(3) Upon receipt of the information identified in sections 1 and 2 of this R357-7-4, the Board shall issue a Certificate for contingent tax credits in accordance with U.C.A. Section 63N-6-406, to each Designated Investor identified at Closing with respect to such Designated Investor's Private Investment to be made at Closing. The following provisions shall apply to such Certificates:

(a) Certificates may only be issued by the Board;

(b) Certificates shall be based on the principal amount invested in the applicable Utah Fund of Funds plus scheduled interest.

(c) The maximum amount of contingent tax credits represented by each Certificate shall be calculated in accordance with the limitations set forth in U.C.A. Section 63N-6-406(2)(a);

(d) The maximum amount of outstanding Certificates that may be redeemed in a Fiscal Year will be calculated on a proportional basis in the proportions set forth in U.C.A. Section 63N-6-406(2)(c).

(e) The maximum amount of tax credits to be certified for a Private Investment may not exceed the difference between (i) the Scheduled Return for such Private Investment and (ii) the Actual Return received with respect to such Private Investment, determined as of the applicable Maturity Date.

(4) Each Certificate issued to a Designated Investor in connection with a Debt-based Refinancing shall contain, or incorporate by reference to another document, each of the following:

(a) The name, address and taxpayer identification number of the Designated Investor to which such Certificate relates;

(b) The amount of the Designated Investor's maximum principal loan amount and interest rate;

(c) All contingencies applicable to the tax credits to which such Certificate relates;

(d) The date of issuance of such Certificate;

(e) The Maturity Date or Maturity Dates of such Certificate;

(f) The maximum amount of contingent tax credits represented by such Certificate;

(g) The process for presenting the Certificate for Certification and Redemption; and

(h) Such other provisions the Board determines to be include that are consistent with the Act and these rules.

(5) Certification of Contingent Tax Credits:

(a) To redeem a Certificate for tax credits, a Designated Investor shall present the Board with its Certificate for Certification no later than June 30 of the Calendar Year in which the earliest Maturity Date stated on the Certificate occurs.

(b) Prior to Certification, the Board will determine the amount of funds available in the Redemption Reserve.

(i) If funds are available in the Redemption Reserve, the Board shall direct the Corporation to make a cash payment with respect to such Certificate in accordance with U.C.A. Section 63N-6-408 to the extent funds are available therefor and tax credits are eligible for Certification under such Certificate, such payment to be allocated among Designated Investors in proportion to the outstanding balances of all Certificates, Certificates of Eligibility and Tax Credit Balance Certificates timely presented to the Board pending Certification.

(ii) Any such payments referenced in paragraph (i) shall reduce, dollar for dollar, the amount of tax credits that may be certified by the Board with respect to such Certificates.

(c) Prior to Certification, the Board, at its election, may make a demand upon a Designated Purchaser to purchase the tax credits represented by the Certificate in accordance with U.C.A. Section 63N-6-409.

(d) The Corporation shall provide all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to be able to certify the amount of tax credits to be claimed by the Designated Investor. Such information and documents shall include but are not limited to the following:

(i) Contractual agreements to which either any of the Corporation, the Designated Investor or any applicable Utah Fund of Funds is a party that were entered into in connection with the Debt-based Refinancing.

(ii) All documents and financial information necessary to calculate the actual amounts paid by the Utah Fund of Funds to the Designated Investor with respect to its Private Investment in the Utah Fund of Funds.

(iii) Any other documents the Board deems necessary to assess compliance with this chapter or to verify the amount of certifiable tax credits related to a Certificate.

(e) No later than the date that is the later of (i) September 1 of the Calendar Year in which the earliest Maturity Date stated on the Certificate occurs or (ii) the date that is 20 Business Days after receipt of all information and documents pursuant to section 5(d) of this R357-7-4 the Board shall establish and certify to the Designated Investor the amount of tax credits related to the Certificate, if any.

(f) The Board shall provide the Designated Investor a Tax Credit Redemption Certificate setting forth the amount of certified tax credits represented by such Certificate (if any) that may be claimed by the Designated Investor, in accordance with U.C.A. Section 63N-6-408 and R357-7-11.

(g) If the certified Certificate has more than one Maturity Date, the Board shall issue to the Designated Investor a Tax Credit Redemption Certificate for the certified tax credits for the applicable Maturity Date in accordance with section 5(f) of this R357-7-4 and shall issue to the Designated Investor one or more Certificates for the balance of any contingent tax credits applicable to future Maturity Dates for which the tax credits are not then being certified.

(h) Certificates being certified for a Maturity Date shall be certified pro rata with all other Certificates being certified for the same Maturity Date.

(i) If a Certificate for contingent tax credits has more than one Maturity Date, the Maturity Date or Maturity Dates occurring in the same Calendar Year on which the Certificate was presented to the Board for certification shall be the Maturity Date or Maturity Dates used for purposes of Certification under this R357-7-4.

(j) Once a Tax Credit Redemption Certificate has been issued, the Board shall notify the Commission of such issuance within five Business Days.

(k) Upon Certification of a Certificate, the Board shall cancel such Certificate, unless such Certificate has a Maturity Date that has not expired, in which case the Board shall issue a balance Certificate in accordance with section 5(g) of this R357-7-4.

(6) Expiration or Cancellation of Tax Credits Represented by Certificates. Tax credits represented by a Certificate shall expire or be cancelled as provided in the Certificate.

(7) The agreements between a Utah Fund of Funds and a Designated Investor regarding a Private Investment shall provide that upon timely presentation of the Certificate applicable to such Private Investment to the Board for Certification in accordance with this R357-7-4 by such Designated Investor or its Transferee, such Designated Investor shall be deemed to have assigned to the Corporation effective as of the Maturity Date all of the indebtedness owed to such Designated Investor by the applicable Utah Fund of Funds. Any payments made by such Utah Fund of Funds to such Designated Investor after the Maturity Date with respect to such assigned indebtedness shall reduce the amount of tax credits represented by the Tax Redemption Certificate to be issued to such Designated Investor. Any amounts received by the Corporation with respect to such assigned indebtedness shall be paid first to the state of Utah in an amount up to the amount of tax credits granted by the state of Utah to such Designated Investor and the balance shall be retained by the Corporation to be included in the Redemption Reserve.

R357-7-5. Procedure for the Issuance, Certification and Redemption of Tax Credits for Equity-based Refinancing Transactions.

This R357-7-5 applies to the Equity-based Refinancing of existing loans to Utah Fund of Funds that were entered into prior to July 1, 2014 even if the refinancing occurs after July 1, 2015.

(1) No later than 20 Business Days prior to each Closing of an Equity-based Refinancing, the Corporation shall provide the following information to the Board:

(a) A summary of the terms of the limited partnership agreement or the operating agreement of the issuing Utah Fund of Funds and other contractual agreements to be entered into by the Utah Fund of Funds or the Corporation in connection with the Equity-based Refinancing; and

(b) The anticipated Closing date.

(2) No later than two Business Days prior to each Closing of an Equity-based Refinancing, the Corporation shall provide the following information to the Board for each Person expected to become a Designated Investor at Closing:

(a) Name of the Designated Investor;

(b) Evidence that the Designated Investor is an Accredited Investor;

(c) The Designated Investor's address and taxpayer identification number;

(d) The aggregate amount of the capital commitment expected to be made at such Closing by such Designated Investor;

(e) The maximum amount of contingent tax credits to be certified for each Certificate to be issued at Closing;

(f) The Maturity Date or Maturity Dates for each Certificate to be issued at Closing; and

(g) All of the requested contingencies to be applicable to the contingent tax credits to which such Certificate relates.

(3) Upon receipt of the information identified in sections 1 and 2 of this R357-7-5, the Board shall issue a Certificate for contingent tax credits in accordance with U.C.A. Section 63N-6-406, to each Designated Investor identified at Closing with respect to such Designated Investor's Private Investment to be made at Closing. The following provisions shall apply to such Certificates:

(a) Certificates may only be issued by the Board;

(b) Certificates shall be based on the Capital Invested in the applicable Utah Fund of Funds.

(c) The maximum amount of contingent tax credits

represented by each Certificate shall be calculated in accordance with the limitations set forth in U.C.A. Section 63N-6-406(2)(a);

(d) The maximum amount of outstanding Certificates that can be redeemed in a Fiscal Year will be calculated on a proportional basis in the proportions set forth in U.C.A. Section 63N-6-406(2)(c).

(e) The maximum amount of tax credits to be certified for a Designated Investor may not exceed any Shortfall attributable to such Designated Investor's Private Investment, determined as of the applicable Maturity Date.

(4) Each Certificate issued to a Designated Investor in connection with an Equity-based Refinancing shall contain, or incorporate by reference to another document, each of the following:

(a) The name, address and taxpayer identification number of the Designated Investor to which such Certificate relates;

(b) The amount of the Designated Investor's maximum investment commitment;

(c) All contingencies applicable to the tax credits to which such Certificate relates;

(d) The date of issuance of such Certificate;

(e) The Maturity Date or Maturity Dates of such Certificate;

(f) The maximum amount of the contingent tax credits represented by such Certificate;

(g) The process for presenting the Certificate for Certification and Redemption; and

(h) Such other provisions the Board determines to include that are consistent with the Act and these rules.

(5) Certification of Contingent Tax Credits:

(a) To redeem a Certificate for tax credits, a Designated Investor shall present the Board with its Certificate for Certification no later than June 30 of the Calendar Year in which the earliest Maturity Date stated on the Certificate occurs.

(b) Prior to Certification, the Board will determine the amount of funds available in the Redemption Reserve.

(i) If funds are available in the Redemption Reserve, the Board shall direct the Corporation to make a cash payment with respect to such Certificate in accordance with U.C.A. Section 63N-6-408 to the extent funds are available therefor and tax credits are eligible for certification under such Certificate, such payment to be allocated among Designated Investors in proportion to the outstanding balances of all Certificates, Certificates of Eligibility and Tax Credit Balance Certificates timely presented to the Board pending Certification.

(ii) Any such payments referenced in paragraph (i) shall reduce, dollar for dollar, the amount of tax credits that may be certified by the Board with respect to such Certificates.

(c) Prior to Certification, the Board, at its election, may make a demand upon a Designated Purchaser to purchase the tax credits represented by the Certificate in accordance with U.C.A. Section 63N-6-409.

(d) The Corporation shall provide all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to be able to certify the amount of tax credits to be claimed by the Designated Investor. Such information and documents include but are not limited to the following:

(i) Contractual agreements to which any of the Corporation, the Designated Investor or any applicable Utah Fund of Funds is a party that were entered into in connection with the Equity-based Refinancing.

(ii) All documents and financial information necessary to calculate the actual amounts paid by the Utah Fund of Funds to the Designated Investor with respect to its Private Investment in the Utah Fund of Funds.

(iii) Any other documents the Board deems necessary to assess compliance with this chapter or to verify the amount of certifiable tax credits related to a Certificate.

(e) No later than the date that is the later of (i) September 1 of the Calendar Year in which the earliest Maturity Date stated on the Certificate occurs or (ii) the date that is 20 Business Days after receipt of all information and documents pursuant to section 5(d) of this R357-7-5 the Board shall establish and certify to the Designated Investor the amount of tax credits related to the Certificate, if any.

(f) The Board shall provide the Designated Investor a Tax Credit Redemption Certificate setting forth the amount of certified tax credits represented by such Certificate (if any) that may be claimed by the Designated Investor, in accordance with U.C.A. Section 63N-6-408 and R357-7-11.

(g) If the certified Certificate has more than one Maturity Date, the Board shall issue to the Designated Investor a Tax Credit Redemption Certificate for the certified tax credits for the applicable Maturity Date in accordance with section 5(f) of this R357-7-5 and shall issue to the Designated Investor one or more Certificates for the balance of any contingent tax credits applicable to future Maturity Dates for which the tax credits are not then being certified.

(h) Certificates being certified for a Maturity Date shall be certified pro rata with all other Certificates being certified for the same Maturity Date.

(i) If a Certificate for contingent tax credits has more than one Maturity Date, the Maturity Date or Maturity Dates occurring in the same Calendar Year on which the Certificate was presented to the Board for certification shall be the Maturity Date or Maturity Dates used for purposes of Certification under this R357-7-5.

(j) Once a Tax Credit Redemption Certificate has been issued, the Board will notify the Commission of such issuance within five Business Days.

(k) Upon Certification of a Certificate, the Board shall cancel such Certificate, unless such Certificate has a Maturity Date that has not expired, in which case the Board shall issue a balance Certificate in accordance with section 5(g) of this R357-7-5.

(6) Expiration or Cancellation of Tax Credits Represented by Certificates. Tax credits represented by a Certificate shall expire or be cancelled as provided in the Certificate.

(7) The agreements between a Utah Fund of Funds and a Designated Investor regarding a Private Investment shall provide that upon timely presentation of the Certificate applicable to such Private Investment to the Board for Certification in accordance with this R357-7-5 by such Designated Investor or its Transferee, such Designated Investor shall be deemed to have assigned to the Corporation effective as of the Maturity Date all of such Designated Investor's Private Investment in the applicable Utah Fund of Funds. Such assignment shall include, without limitation, any and all rights to future distributions, dividends, redemption proceeds or other payments from such Utah Fund of Funds attributable to such Private Investment. Any payments made by such Utah Fund of Funds to such Designated Investor after the Maturity Date with respect to such assigned interest shall reduce the amount of tax credits represented by the Tax Redemption Certificate to be issued to such Designated Investor. Any amounts received by the Corporation with respect to such assigned interest shall be paid first to the state of Utah in an amount up to the amount of certified tax credits granted by the state of Utah to such Designated Investor and the balance shall be retained by the Corporation to be included in the Redemption Reserve.

R357-7-6. Procedure for the Application, Issuance, Certification and Redemption of Economic Development Incentive-based Tax Credits for Equity-based Investments in a Utah Fund of Funds.

This R357-7-6 applies to Private Investments structured as equity investments in any Utah Fund of Funds initiated on or

after July 1, 2015, excluding any Equity-based Refinancing.

(1) No later than 20 Business Days prior to each Closing to which this R357-7-6 applies, the Corporation shall provide the following information to the Board:

(a) A summary of the terms of the limited partnership agreement or the operating agreement of the applicable Utah Fund of Funds and any other contractual agreements to be entered into by the applicable Utah Fund of Funds, the Corporation and any Designated Investor in connection with its Private Investment in a Utah Fund of Funds; and

(b) The anticipated Closing date.

(2) No later than two Business Days prior to each Closing, the Corporation shall provide the Board with the following information with respect to each Person expected to become a Designated Investor at such Closing:

(a) Name of the Designated Investor;

(b) Evidence that the Designated Investor is an Accredited Investor;

(c) The Designated Investor's address and taxpayer identification number;

(d) The aggregate amount of the capital commitment expected to be made at such Closing by the Designated Investor; and

(e) The Term of the applicable Utah Fund of Funds.

(3) Within 20 Business Days after each Closing, the Board shall issue to each Designated Investor that has invested in the applicable Utah Fund of Funds at such Closing a Certificate of Eligibility.

(a) The maximum aggregate amount of tax credits for which a Designated Investor may apply as represented by its Certificate of Eligibility shall be calculated in accordance with the limitations set forth in U.C.A. Section 63N-6-406(2)(a).

(b) A Certificate of Eligibility shall entitle a Designated Investor to apply for a Tax Credit Redemption Certificate in accordance with this R357-7-6 as in effect at the time such Certificate of Eligibility was certified by the Board and may not be modified, terminated or rescinded without the consent of such Designated Investor.

(4) Each Certificate of Eligibility shall contain, or incorporate by reference to another document, each of the following:

(a) The name, address and taxpayer identification number of the Designated Investor to whom the Certificate of Eligibility is issued;

(b) The maximum amount of tax credits represented by such Certificate of Eligibility for which such Designated Investor is eligible to apply (which shall be equal to such Designated Investor's capital commitment to the applicable Utah Fund of Funds);

(c) The date of issuance of the Certificate of Eligibility; and

(d) A statement that such Designated Investor is eligible to apply for tax credits represented by a Tax Credit Redemption Certificate, subject to the limitations set forth in this R357-7-6.

(5) Application for Tax Credits or other Payments.

(a) A Designated Investor who has received a Certificate of Eligibility may apply to the Board for tax credits represented by a Tax Credit Redemption Certificate if the following conditions are satisfied:

(i) Subject to section 5(c) of this R357-7-6, such Designated Investor has contributed capital to the applicable Utah Fund of Funds in the amount required under the agreement between such Utah Fund of Funds and the Designated Investor;

(ii) The Term of the applicable Utah Fund of Funds has expired.

(iii) As of the Determination Date, there is a Shortfall attributable to such Designated Investor's Private Investment.

(iv) There is Economic Development Impact attributable to the applicable Utah Fund of Funds as most recently certified by the Board in accordance with R357-7-9 and section 12 of this R357-7-6 prior to the Determination Date.

(v) As of the Determination Date, there are insufficient funds in the Redemption Reserve available to make a cash payment equal to the amount of the lesser of (i) the Shortfall described in section 5(a)(iii) of this R357-7-6 for all Designated Investors of the applicable Utah Fund of Funds, and (ii) the amount of Economic Development Impact described in section 5(a)(iv) of this R357-7-6 attributable to such Designated Investors.

(b) Any Designated Investor not eligible to apply for tax credits as a result of the condition set forth in section 5(a)(v) of this R357-7-6, may present its Certificate of Eligibility to the Board no later than the June 30 following the Determination Date, and to the extent such Certificate of Eligibility would otherwise be certified in accordance with this R357-7-6 absent such condition, the Board shall direct the Corporation to make a cash payment from the Redemption Reserve or other sources with respect to such Designated Investors in accordance with U.C.A. Section 63N-6-408 to the extent funds are available therefor by no later than September 1 of the Calendar Year immediately following the Determination Date, such payment to be allocated among Designated Investors in proportion to the outstanding balances of all Certificates, Certificates of Eligibility and Tax Credit Balance Certificates timely presented to the Board pending Certification.

(c) If a Feeder Fund fails to contribute capital to a Utah Fund of Funds with respect to which such Feeder Fund is a Designated Investor in the amount required under the agreement between such Utah Fund of Funds and such Feeder Fund, and such failure is a direct result of the failure of any member, partner or other equity investor of such Feeder Fund (a "Feeder Fund Investor") to make a contribution of capital required to be made to such Feeder Fund, then the restriction on applying for tax credits set forth in section 5(a)(i) of this R357-7-6 shall apply only to (i) that portion of the tax credits represented by the Certificate of Eligibility issued to such Feeder Fund that bears the same proportion to the aggregate tax credits represented by such Certificate of Eligibility, as the obligation to contribute capital to such Feeder Fund of such Feeder Fund Investor bears to the aggregate obligations to contribute capital to such Feeder Fund of all its Feeder Fund Investors or (ii) any Certificate of Eligibility Transferred to such Feeder Fund Investor by such Feeder Fund.

(6) Upon the satisfaction of the conditions set forth in section 5(a) of this R357-7-6, a Designated Investor may apply for a Tax Credit Redemption Certificate, in a form prescribed by the Board in accordance with this R357-7-6. The Tax Credit Redemption Certificate shall be issued in an amount equal to the lesser of (i) the Economic Development Impact attributable to such Designated Investor determined in accordance with R357-7-9 and section 12 of this R357-7-6 and (ii) the Shortfall attributable to such Designated Investor's Private Investment, in each case calculated as of the Determination Date.

(7) To apply for tax credits, a Designated Investor shall present the Board with its Certificate of Eligibility no later than the first June 30 following the Determination Date. If for any reason a Designated Investor fails to present its Certificate of Eligibility to the Board on time, such Certificate of Eligibility shall automatically expire without further action of the Board and any eligibility to apply for tax credits represented thereby shall be forfeited.

(a) The amount of tax credits represented by a Certificate of Eligibility that the Board is permitted to certify in a Fiscal Year upon application by a Designated Investor will be calculated and allocated in accordance with section 13 of this R357-7-6.

(b) The Corporation shall provide all information and documents reasonably available to it that the Board requests and

determines are necessary for the Board to be able to certify the amount of tax credits to be claimed by the Designated Investor. Such information and documents include but are not limited to the following:

(i) Contractual agreements to which either the Corporation or any applicable Utah Fund of Funds is a party that were entered into in connection with the Designated Investor's Private Investment in the applicable Utah Fund of Funds.

(ii) All financial information and related documents necessary to calculate the Shortfall attributable to such Designated Investor's Private Investment.

(iii) Any other documents the Board deems necessary to assess compliance with this chapter or to verify the amount of certifiable tax credits related to such Certificate of Eligibility.

(c) Prior to Certification, the Board will determine the amount of funds available in the Redemption Reserve.

(i) If funds are available in the Redemption Reserve, the Board shall direct the Corporation to make a cash payment with respect to such Certificate of Eligibility in accordance with U.C.A. Section 63N-6-408 to the extent funds are available therefor and tax credits are eligible for certification under such Certificate of Eligibility, such payment to be allocated among Designated Investors in proportion to the outstanding balances of all Certificates, Certificates of Eligibility and Tax Credit Balance Certificates timely presented to the Board pending Certification.

(ii) Any such payments referenced in paragraph (i) shall reduce, dollar for dollar, the amount of tax credits that may be certified by the Board with respect to such Certificates of Eligibility and Tax Credit Balance Certificates.

(d) Prior to Certification, the Board, at its election, may make a demand upon a Designated Purchaser to purchase the tax credits represented by the Certificate of Eligibility in accordance with U.C.A. Section 63N-6-409.

(e) No later than the date that is the later of (i) September 1 of the Calendar Year immediately following the Determination Date or (ii) the date that is 20 Business Days after receipt of all information and documents pursuant to section 7(b) of this R357-7-6, the Board shall establish and certify to the Designated Investor the amount of tax credits related to the Certificate of Eligibility, if any.

(f) The Board shall Issue each Designated Investor a Tax Credit Redemption Certificate setting forth the amount of certified tax credits represented by such certificate (if any) that may be claimed by such Designated Investor, in accordance with U.C.A. Section 63N-6-408 and R357-7-11.

(g) Once a Tax Credit Redemption Certificate has been issued, the Board will notify the Commission of such issuance within five Business Days.

(h) Upon issuance of a Tax Credit Redemption Certificate, the Board shall cancel the related Certificate of Eligibility.

(8) To the extent that, in accordance with section 7(a) of this R357-7-6, the Board is not permitted to certify all of the tax credits represented by a Designated Investor's Certificate of Eligibility, upon cancellation of the Certificate of Eligibility in accordance with section 7(h) of this R357-7-6, the Board shall issue to such Designated Investor a Tax Credit Balance Certificate for the amount of remaining tax credits that were limited by section 7(a) of this R357-7-6. The amount of tax credits for which a Designated Investor is eligible to apply represented by its Tax Credit Balance Certificate shall not be adjusted for any Economic Development Impact measurements made in accordance with R357-7-9 for any period after the applicable Determination Date.

(9) A Tax Credit Redemption Certificate issued to a Designated Investor shall contain each of the following:

(a) The name, address and taxpayer identification number of such Designated Investor;

(b) The date of issuance of the Tax Credit Redemption Certificate; and

(c) The amount of tax credits to be claimed.

(10) A Tax Credit Balance Certificate issued to a Designated Investor shall contain each of the following:

(a) The name, address and taxpayer identification number of such Designated Investor;

(b) The date of issuance of the Tax Credit Balance Certificate;

(c) The certificate number of the cancelled Certificate of Eligibility to which the Tax Credit Balance Certificate relates;

(d) The amount tax credits represented by such Tax Credit Balance Certificate; and

(e) The Fiscal Year or Fiscal Years in which such Designated Investor shall be eligible to apply for tax credits represented by such Tax Credit Balance Certificate.

(11) During each the Fiscal Year set forth on a Tax Credit Balance Certificate, a Designated Investor may apply for Certification of the tax credits represented by such Tax Credit Balance Certificate by presenting it to the Board no later than June 30 of such Fiscal Year. If for any reason a Designated Investor fails to present its Tax Credit Balance Certificate to the Board in a timely fashion, such Tax Credit Balance Certificate shall automatically expire without further action of the Board and any amount of tax credits represented thereby shall be forfeited.

(a) The amount of tax credits represented by a Tax Credit Balance Certificate that the Board is permitted to certify in a Fiscal Year upon application by a Designated Investor will be calculated and allocated in accordance with section 13 of this R357-7-6.

(b) Prior to Certification, the Board will determine the amount of funds available in the Redemption Reserve and payments shall be made in a manner consistent with that specified in section 7(c) of this R357-7-6.

(c) Prior to Certification, the Board, at its election, may make a demand upon a Designated Purchaser to purchase the tax credits represented by the Tax Credit Balance Certificate in accordance with U.C.A. Section 63N-6-409.

(d) No later than September 1 of the applicable Fiscal Year set forth in applying Designated Investor's Tax Balance Certificate, the Board shall determine and certify to such Designated Investor the amount of tax credits related to such Tax Credit Balance Certificate (if any) that may be redeemed in such Fiscal Year.

(e) The Board shall issue to the Designated Investor a Tax Credit Redemption Certificate setting forth the amount of certified tax credits represented by such certificate (if any) that may be claimed by the Designated Investor, in accordance with U.C.A. Section 63N-6-408 and R357-7-11.

(f) Once a tax credit has been certified for redemption, the Board will notify the Commission of such certification within five Business Days.

(g) Upon Certification for redemption of a Tax Credit Balance Certificate, the Board shall cancel such Tax Credit Balance Certificate.

(h) To the extent that, in accordance with section 11(a) of this R357-7-6, the Board was not permitted to certify all of the tax credits represented by a Designated Investor's Tax Credit Balance Certificate in the Fiscal Year applied for, upon cancellation of the Tax Credit Balance Certificate in accordance with section 11(g) of this R357-7-6, the Board shall issue to such Designated Investor a new Tax Credit Balance Certificate for the amount of remaining tax credits that were limited by section 11(a) of this R357-7-6, and the Designated Investor may apply for Certification of such certificate in the following Fiscal Year or Fiscal Years in accordance with this section 11.

(12) The amount of Economic Development Impact certified by the Board in accordance with R357-7-9 shall be allocated to each Designated Investor in accordance with this

section 12.

(a) The amount of Economic Development Impact measured in accordance with sections 2 and 3 of R357-7-9 shall be allocated to each Designated Investor of the applicable Utah Fund of Funds on a pro rata basis, based on its aggregate capital commitment to such applicable Utah Fund of Funds compared to the aggregate capital commitments of all other Designated Investors in such applicable Utah Fund of Funds.

(b) The amount of Economic Development Impact measured in accordance with section 4 of R357-7-9 shall be allocated to the Designated Investors of the various Utah Funds of Funds as determined by the contractual agreements between such Designated Investors and such Utah Funds of Funds with respect to such Designated Investors' respective Private Investments in such Utah Funds of Funds.

(c) The amount of Economic Development Impact determined in accordance with section 5 of R357-7-9 shall be allocated:

(i) to each Designated Investor of the applicable Utah Fund of Funds on a pro rata basis based on its aggregate capital commitment to such applicable Utah Fund of Funds compared to the aggregate capital commitments of all other Designated Investors in such applicable Utah Fund of Funds, if such Economic Development Impact is in respect of an applicable Utah Fund of Funds; or

(ii) to the Designated Investors of the various Utah Funds of Funds as determined by the contractual agreements between such Designated Investors and such Utah Funds of Funds with respect to such Designated Investors' respective Private Investments in such Utah Funds of Funds, if such Economic Development Impact is in respect of the activities of the Corporation.

(13) The maximum amount of tax credits the Board is permitted to certify in accordance with this R357-7-6 with respect to Certificates of Eligibility and Tax Credit Balance Certificates presented to the Board by Designated Investors of a Utah Fund of Funds in any Fiscal Year shall be calculated on a proportional basis in the proportions set forth in U.C.A. Section 63N-6-406(2)(c). For the purposes of such calculation:

(a) The $100,000,000 increment set forth in U.C.A. Section 63N-6-406(2)(c) shall be determined by reference to the aggregate capital commitments made by each of the Designated Investors that is eligible to apply for such credits in such Fiscal Year, as set forth on the applicable Certificate of Eligibility of such Designated Investor; and

(b) Available tax credits shall be allocated among such Designated Investors on a pro rata basis in accordance with on their respective capital commitments to the applicable Utah Fund of Funds.

(14) A tax credit represented by a Certificate of Eligibility or Tax Credit Balance Certificate may only be redeemed by a Designated Investor in accordance with the terms of the Certificate of Eligibility or Tax Credit Balance Certificate, as applicable, this R357-7-6 and U.C.A. Section 63N-6-408.

(15) The agreements between a Utah Fund of Funds and a Designated Investor regarding a Private Investment shall provide that upon timely presentation of the Certificate of Eligibility applicable to such Private Investment to the Board for Certification of tax credits represented by such certificate in accordance with this R357-7-6 by such Designated Investor or its Transferee, such Designated Investor shall be deemed to have assigned to the Corporation effective as of the Determination Date a portion of such Designated Investor's Private Investment in the applicable Utah Fund of Funds equal to a fraction, calculated as of the Determination Date, the numerator of which is the amount of such Designated Investor's Tax Credit Eligibility and the denominator of which is the Shortfall attributable to such Designated Investor's Private Investment. Such assignment shall include, without limitation, any and all rights to distributions, dividends, redemption proceeds or other payments from such Utah Fund of Funds attributable to such Private Investment that are made after the Determination Date. Any distributions, dividends, redemption proceeds or other payments made by such Utah Fund of Funds after the Determination Date with respect to such assigned interest to such Designated Investor shall reduce the amount of tax credits that may be issued with respect to the applicable Certificate of Eligibility. Any amounts received by the Corporation with respect to such assigned interest shall be paid first to the state of Utah in an amount up to the amount of tax credits granted by the state of Utah to such Designated Investor and the balance shall be retained by the Corporation to be included in the Redemption Reserve.

R357-7-7. Transfer of Certificates, Tax Credit Redemption Certificates, Certificates of Eligibility and Tax Credit Balance Certificates.

(1) Certificates, Certificates of Eligibility, Tax Credit Redemption Certificates and Tax Credit Balance Certificates shall be transferrable in whole or in part by a Designated Investor to any Transferee or Transferees.

(2) Transfer of a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate may be effected by the Transferor's surrender of such certificate to the Board with an endorsement in favor of the Transferee, a statement containing the name, address and taxpayer identification number of the Transferee and a written request for the Board to issue a replacement certificate in the name of the Transferee.

(a) In any case where the Transferor requests that more than one replacement certificate be issued, such request must be accompanied by a statement by the Transferor that sets forth the amount of tax credits represented by the Transferred Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate that are requested to be represented by each replacement Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate.

(3) Within 20 Business Days after the surrender and endorsement of a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, the Board shall issue one or more replacement Certificates, Certificates of Eligibility, Tax Credit Redemption Certificates or Tax Credit Balance Certificates, as applicable, in the name of the applicable Transferee. If a Transferor requests the Transfer of only a portion of a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, the Board shall issue a replacement Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate to the Transferor setting forth the aggregate amount of remaining tax credits represented by such Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate.

(4) Upon the surrender of a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate to the Board, and the issuance of the applicable replacement certificate or certificates for Transfer, such surrendered certificate shall be cancelled.

(5) A Designated Investor may grant security interests in such Designated Investor's Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, and any tax credits represented thereby, as collateral for loans to or other obligations of such Designated Investor. The Designated Investor shall provide notice to the Board of any such grant of a security interest promptly after any such grant is made.

(6) A Designated Investor shall be entitled to Transfer a Certificate, Certificate of Eligibility, Tax Credit Redemption

Certificate or Tax Credit Balance Certificate without also transferring its corresponding Private Investment in a Utah Fund of Funds. In such event, a Transferee will be entitled to exercise its rights with respect to a Transferred Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, as described in such certificate, and as set forth in the Act and the rules set forth in this chapter, by reference to the portion of the Transferor's Private Investment held prior to such Transfer that bears the same proportion to the Transferor's total Private Investment held prior to such Transfer that the tax credits represented by such Transferred Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate bears to the total tax credits represented by the Transferor's Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate prior to such Transfer, as if such portion of the Transferor's Private Investment had been Transferred to the Transferee. Accordingly, the Capital Invested, Scheduled Return, and Actual Return applicable to the Transferee shall be determined by reference to such portion of the Transferor's Private Investment, including amounts related to principal loaned, capital contributed, receipts and returns that are transacted prior to such Transfer with respect to such portion. If a Transferor does not hold a Private Investment, a Transferee of a Transferred Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate shall be entitled to the exercise the rights with respect thereto by reference to the Private Investment of such Transferor's predecessor or successor in interest, as the case may be, in the same proportions as described above.

R357-7-8. Criteria and Procedures for Assessing the Likelihood of Future Certificate Redemption.

(1) Each year, the Corporation and/or the allocation manager designated in accordance with U.C.A. Section 63N-6-301(2)(b) will provide the Board with a comprehensive report including the following:

(a) A detailed accounting of cash outflows and cash inflows from investments made by each Utah Fund of Funds during the previous Calendar Year.

(b) A detailed accounting of payments made to lenders to or equity investors in each Utah Fund of Funds during the previous Calendar Year.

(c) A detailed accounting of management fees paid to the Corporation by each Utah Fund of Funds during the previous Calendar Year.

(d) A detailed accounting of increases or decreases in unrealized value of the assets of each Utah Fund of Funds during the Previous Calendar Year.

(e) A five year projection of cash flows with sensitivity around investment returns, interest rates and distribution pacing for each Utah Fund of Funds.

(f) Third party audit of each Utah Fund of Funds including asset valuation as of the end of the previous Calendar Year.

(g) The internal rate of return on each investment made by each Utah Fund of Funds through the end of the previous Calendar Year.

R357-7-9. Criteria and Procedures for Calculating the Economic Development Impact of Each Utah Fund of Funds and the Corporation for Purposes of Incentive-Based Tax Credits.

The Economic Development Impact attributable to each Utah Fund of Funds for equity-based Private Investments that were initiated on or after July 1, 2015 and to the Corporation shall be measured and determined in accordance with this R357-7-9.

(1) The Economic Development Impact attributable to each Utah Fund of Funds for equity-based Private Investments determined in accordance with U.C.A. Section 63N-6-406(3)(d)(i) shall be equal to the sum of all investments made by such Utah Fund of Funds directly or indirectly in Utah-based Operating Companies plus verifiable amounts invested in Utah-based Operating Companies and Utah-based Investment Funds by third parties (other than amounts invested directly by a Utah Fund of Funds or indirectly by any portfolio fund held by any Utah Fund of Funds) that are directly facilitated by the Corporation's economic development plan and economic development activities, calculated in accordance with sections 2, 3 and 4 of this R357-7-9, respectively.

(2) Direct Investments. A direct investment made by a Utah Fund of Funds in a Utah-based Operating Company shall, at the time of determination, be measured by reference to the greater of the Cost of such investment or the Exit Value of such investment.

(a) The "Cost" of a direct investment by a Utah Fund of Funds shall mean the sum of all amounts paid by such Utah Fund of Funds to make debt or equity investments in such Utah-based Operating Company as reported in the financial statements of such Utah Fund of Funds.

(b) The "Exit Value" of a direct investment by a Utah Fund of Funds shall mean, without duplication, the sum of all amounts received upon the sale or other disposition of any debt or equity investments made in such Utah-based Operating Company as reported in the financial statements of such Utah Fund of Funds plus the fair market value of all equity investments held by such Utah Fund of Funds based on the closing sale price of such equity investments on the expiration date of any applicable contractual restrictions on transfer of such equity investments that are entered into by such Utah Fund of Funds in connection with an underwritten initial public offering of such Utah-based Operating Company.

(c) The Exit Value of a direct investment in such Utah-based Operating Company by a Utah Fund of Funds shall apply only to that portion of an investment that is actually sold or otherwise disposed of, or that is held by such Utah Fund of Funds on the expiration date of any applicable contractual restrictions on transfer of equity investments that are entered into by such Utah Fund of Funds in connection with an underwritten initial public offering of such Utah-based Operating Company; all other direct investments made in a Utah-based Operating Company shall be measured by reference to Cost.

(3) Indirect Investments. An indirect investment made by a Utah Fund of Funds in a Utah-based Operating Company shall, at the time of determination, be measured by reference to the greater of the Cost of such investment or the Exit Value of such investment, in each case as attributable to such Utah Fund of Funds.

(a) The amount of indirect investments attributable to such Utah Fund of Funds in a Utah-based Operating Company shall be the amount of all investments in such Utah-based Operating Company made by a portfolio fund held by such Utah Fund of Funds multiplied by a fraction, the numerator of which is such Utah fund of fund's capital commitment to the applicable portfolio fund and the denominator of which is the aggregate capital commitments of all partners, members or other category of equity investor with similar status of such portfolio fund, each as reported in the financial statements or other investor reports of such portfolio fund.

(b) The "Cost" of a portfolio fund's investment shall mean the sum of all amounts paid by such portfolio fund to make debt or equity investments in such Utah-based Operating Company, as reported in the financial statements or other investor reports of such portfolio fund.

(c) The "Exit Value" of a portfolio fund's investment in such Utah-based Operating Company shall mean, without duplication, the sum of all amounts received upon the sale or

other disposition of all debt or equity investments in such Utah-based Operating Company and the value attributed to such investment made at the time of the distribution in kind of such investment to the partners, members or other category of equity investor with similar status of such portfolio fund as reported in the financial statements or other investor reports of such portfolio fund.

(d) The Exit Value of a portfolio fund's investment shall only apply to that portion of the investment that is actually sold, disposed of, or distributed in kind as of the time of determination; all other investments made by a portfolio fund shall be measured by reference to Cost.

(4) Investments by Third Parties Facilitated by the Corporation. Verifiable amounts invested in Utah-based Operating Companies (other than amounts invested directly by a Utah Fund of Funds or indirectly by any portfolio fund held by any Utah Fund of Funds) and in Utah-based Investment Funds that are directly facilitated by the Corporation's economic development plan and economic development activities shall, at the time of determination, be measured as follows:

(a) The amount invested directly by a third party (other than a Utah Fund of Funds or a portfolio fund held by any Utah Fund of Funds) in a Utah-based Operating Company will be included in the Economic Development Impact attributable to the Corporation if the Corporation's facilitation of such investment and the investment amount is confirmed in writing to the Corporation by either such third party or such Utah-based Operating Company in a manner consistent with section 4(c) of this R357-7-9 and shall be measured in accordance with this section 4(a) by reference to the greater of Cost of such investment or the Exit Value of such investment.

(i) The "Cost" of a direct investment by such third party in a Utah-based Operating Company shall mean the sum of all amounts paid by such third party to make debt or equity investments in such Utah-based Operating Company as confirmed in writing by such third party in accordance with section 4(c) of this R357-7-9.

(ii) The "Exit Value" of a direct investment by such third party shall mean, without duplication, the sum of all amounts received upon the sale or other disposition of any debt or equity investments made in such Utah-based Operating Company plus the fair market value of all equity investments held by such third party based on the closing sale price of such equity investments on the expiration date of any applicable contractual restrictions on transfer of such equity investments that are entered into by such third party in connection with an underwritten initial public offering of such Utah-based Operating Company, in each case as confirmed in writing by such third party in accordance with section 4(c) of this R357-7-9.

(iii) The Exit Value of a direct investment in such Utah-based Operating Company by a Utah Fund of Funds shall apply only to that portion of an investment that is actually sold or otherwise disposed of, or that is held by such third party on the expiration date of any applicable contractual restrictions on transfer of equity investments that are entered into by such third party in connection with an underwritten initial public offering of such Utah-based Operating Company; all other direct investments made in a Utah-based Operating Company by such third party shall be measured by reference to Cost.

(b) The amount invested indirectly by a third party (other than a Utah Fund of Funds or a portfolio fund held by any Utah Fund of Funds) in a Utah-based Operating Company through its investment in a Utah-based Investment Fund will be included in the Economic Development Impact attributable to the Corporation if the Corporation's facilitation of such investment and the investment amount is confirmed in writing to the Corporation by either such third party or such Utah-based Investment Fund in a manner consistent with section 4(c) of this R357-7-9 and shall be measured in accordance with this section 4(b). The Economic Development Impact of the amount indirectly invested by such third party in a Utah-based Operating Company through its investment in a Utah-based Investment Fund shall, at the time of determination, be measured by reference to the greater of the Cost of such investment or the Exit Value of such investment, in each case, as attributable to such third party.

(i) The amount of indirect investments attributable to such third party in a Utah-based Operating Company shall be the amount of all investments in such Utah-based Operating Company made by such Utah-based Investment Fund multiplied by a fraction, the numerator of which is such third party's capital commitment to such Utah-based Investment Fund and the denominator of which is the aggregate capital commitments of all partners, members or other category of equity investor with similar status of such Utah-based Investment Fund, each as confirmed in writing by the Utah-based Investment Fund in accordance with section 4(c) of this R357-7-9.

(ii) The "Cost" of such Utah-based Investment Fund's investment shall mean the sum of all amounts paid by such Utah-based Investment Fund to make debt or equity investments in such Utah-based Operating Company, as confirmed in writing by the Utah-based Investment Fund in accordance with section 4(c) of this R357-7-9.

(iii) The "Exit Value" of a such Utah-based Fund of Fund's investment in such Utah-based Operating Company shall mean, without duplication, the sum of all amounts received upon the sale or other disposition of all debt or equity investments in such Utah-based Operating Company and the value attributed to such investment made at the time of the distribution in kind of such investment to the partners, members or other category of equity investor with similar status of third party as confirmed in writing by the Utah-based Investment Fund in accordance with section 4(c) of this R357-7-9.

(iv) The Exit Value of a third party's investment shall only apply to that portion of the investment that is actually sold, disposed of, or distributed in kind as of the time of determination; all other investments made by such third party shall be measured by reference to Cost.

(c) The confirmation in writing referred to in sections 4(a) and 4(b) of this R357-7-9 shall be made by a responsible officer or equivalent representative of the third party, the Utah-based Operating Company or the Utah-based Investment Fund and shall include (i) the identity of the Utah-based Operating Company or the Utah-based Investment Fund, (ii) a statement that the Corporation was a significant factor in an investment in such Utah-based Operating Company or Utah-based Investment Fund having been made, (iii) the Cost of such investment made by such third party through the date of the confirmation, (iv) the amount of commitments by such third party to make additional investments in the future, and (v) to the extent applicable, the Exit Value of such investment made by such third party through the date of the confirmation. A confirmation may be provided from time to time to update the Cost of investments made, any outstanding commitments to invest and the Exit Value of investments, which update shall be taken into account in determining Economic Development Impact attributable to the Corporation through the date of the most recent confirmation. Any such written confirmation may be contained in an email or other electronic transmission.

(d) The Economic Development Impact attributable to the Corporation shall be measured by reference to amounts invested as specified in sections 4(a) and 4(b) of this R357-7-9 after enactment of the 2015 amendments to the Utah Venture Capital Enhancement Act.

(5) Third Party Evaluations Authorized by the Board. With approval from the Board, the Corporation may engage an independent third party experienced in evaluating economic development activities to evaluate a Utah Fund of Funds and

determine the Economic Development Impact of such Utah Fund of Funds and the activities of the Corporation in accordance with U.C.A. Section 63N-6-406(3)(d)(ii) as follows.

(a) The independent third party shall use a nationally recognized economic development modeling tool approved by the Board.

(b) The Economic Development Impact of a Utah Fund of Funds shall be determined by reference to the economic development impact of the Utah-based Operating Companies in which such Utah Fund of Funds has directly or indirectly invested.

(c) The Economic Development Impact of the Corporation shall be determined by reference to the result of the economic development activities engaged in by the Corporation, including the facilitation by the Corporation of investment in Utah-based Operating Companies and Utah-based Investment Funds.

(d) The Corporation shall provide to the independent third party all information and documents reasonably available to it that the independent third party requests and determines are necessary for the third party make its determination in accordance with this section 5.

(6) Any determination by an independent third party conducted in accordance with section 5 of this R357-7-9 shall adjust the Economic Development Impact attributable under sections 2, 3 and 4 of this R357-7-9 to any Utah Fund of Funds or the Corporation with respect to any investment in a Utah-based Operating Company or Utah-based Investment Fund to account only for Economic Development Impact incremental to the Economic Development Impact that has been attributed under sections 2, 3 and 4 of this R357-7-9 in order to avoid double counting.

(7) The Corporation's Annual Report made in accordance with U.C.A. Section 63N-6-301(6) shall include the following information.

(a) The amounts invested directly or indirectly by each Utah funds of funds into Utah-based Operating Companies and the resulting measurement of Economic Development Impact determined in accordance with sections 2 and 3 of this R357-7-9.

(b) The amounts invested in Utah-based Operating Companies (other than amounts invested by portfolio funds held by any Utah Fund of Funds) and Utah-based Investment Funds that are facilitated by the Corporation's economic development plan and activities and the resulting measurement of Economic Development Impact determined in accordance with section 4 of this R357-7-9.

(c) Any independent third party's evaluations of Economic Development Impact made in accordance with section 5 of this R357-7-9.

(8) The Auditor's opinion required by U.C.A. Section 63N-6-405(4)(d) shall address the information in the Annual Report included in accordance with section 7 of this R357-7-9. Such opinion may be based upon the performance by the Auditor of agreed upon procedures as specified by the Board, which procedures may include reliance upon the financial statements or other investor reports of the portfolio funds of the Utah Fund of Funds, the certifications of the third party investors, Utah-based Operating Companies and Utah-based Investment Funds made in accordance with sections 2, 3 and 4 of this R357-7-9 and the most recent determinations of any independent third party made in accordance with section 5 of this R357-7-9, in each case without the need to verify the accuracy of such financial statements, certifications or determinations.

(9) The Board shall review the amount of Economic Development Impact reported by the Corporation in accordance with section 5 of this R357-7-9 and within 45 Business Days, unless good cause exists to extend the number of days, following receipt from the Corporation of the report of the independent third party the Board shall either (a) approve the amount of Economic Development Impact stated in the report, or

(b) notify the Corporation of any disagreement with such amount setting forth the reasons for such disagreement.

(a) Upon approval of the amount of Economic Development Impact set forth in the report, the Board shall certify the Economic Development Impact to the Corporation.

(b) If the Board notifies the Corporation of its disagreement with the amount of Economic Development Impact stated in the report, the Corporation shall respond in writing to the Board within 15 Business Days of receipt of notice from the Board of its disagreement. The Corporation's response shall include either an explanation addressing the Board's reasons for disagreement or a revised determination of the amount of Economic Development Impact and the basis therefore.

(c) The Board shall certify to the Corporation within 15 Business Days of receipt of such explanation or revised determination that it agrees with such explanation or revised determination, or shall state its reasons for disagreement and the procedure set forth in section 9(b) of this R357-7-9, and this section 9(c) shall continue until all such determinations have been certified by the Board.

(d) The Corporation shall provide to the Board all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to make its certification in accordance with this section 9.

(10) The Board shall review the amount of Economic Development Impact reported by the Corporation in accordance with section 7 of this R357-7-9 and within 40 Business Days following receipt of the Corporation's Annual Report the Board shall either (a) approve the amount of Economic Development Impact stated in the report, or (b) reduce such amount by the amount of Economic Development Impact it determines to have been counted in more than one category.

(a) Upon approval of the amount of Economic Development Impact set forth in the report, the Board shall certify the Economic Development Impact to the Corporation.

(b) If the Board determines to make a reduction to avoid double counting, it shall notify the Corporation such determination. The Corporation shall respond in writing to the Board within 15 Business Days of receipt of such a notice from the Board. The Corporation's response shall include an explanation addressing the Board's reasons for reduction or a revised determination of the amount of Economic Development Impact and the basis therefore.

(c) The Board shall certify to the Corporation within 15 Business Days of receipt of such explanation or revised determination that it agrees with such explanation or revised determination, or shall state its reasons for reduction and the procedure set forth in section 10(b) of this R357-7-9, and this section 10(c) shall continue until all such determinations have been certified by the Board.

(d) The Corporation shall provide to the Board all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to make its certification in accordance with this section 9.

(11) The total amount of Economic Development Impact as of any Determination Date shall be the sum of the Economic Development Impact for each year through the Determination Date, determined in accordance with section 9 of this R357-7-9.

R357-7-10. Criteria for Establishing the Target Rate of Return of the Investment Portfolio.

For investment portfolios of each Utah Fund of Funds:

(1) The "Target Rate of Return" on venture capital investments of such Utah Fund of Funds is a minimum of 5%. The Corporation will submit to the Board annually a detailed

accounting of the calculation of the rate of return. It is understood by the Board that returns in the early years of each Utah Fund of Funds will likely be negative.

R357-7-11. Claiming Tax Credits Represented by Tax Credit Redemption Certificates.

(1) Once certified by the Board, the holder of a Tax Credit Redemption Certificate may present such Certificate to the Commission to claim a tax credit in accordance with the following provisions:

(a) The tax credit represented by the Tax Credit Redemption Certificate shall be claimed for the tax year of the Designated Investor that begins during the Calendar Year the Board has certified such Tax Credit Redemption Certificate. The Designated Investor may submit to the Commission at any time following the date of issuance of the Tax Credit Redemption Certificate by the Board, but no later than the general filing deadline for Utah State tax returns (including extensions) of the tax year for which the redemption may be claimed.

(b) The Person claiming a refund must timely file a Utah State tax return claiming a refundable credit; and no other filing or forms or actions are necessary, and no other conditions apply, for obtaining a refund in respect of such tax credit. The Commission will manually process a tax return with a claim for refund and will pay the amount indicated on such tax return (such payment generally, but not always, made within ninety (90) days from the date for such return). If the Board has notified the Commission of the filing of a claim for refund by the Designated Investor, the Commission will take steps to expedite the refund.

(2) There is no limitation on a Person:

(a) filing more than one claim for refund with the Commission, or

(b) receiving more than one refund from the Commission, in each case, in any one Calendar Year or other twelve (12) month period.

(3) If a Person is not otherwise a Utah taxpayer, its taxable year, for purposes of these rules, shall be considered to end annually on the same date that its tax year ends for United States federal income tax purposes. For a disregarded entity that is not otherwise a Utah taxpayer, such entity may designate any date on which its taxable year ends by stating such date on the Utah tax return on which it files its claim for refund.

(4) If the Designated Investor is a corporation or other business organization or entity included in a combined Utah state tax return, and such tax return claims a tax credit, the commission will treat such tax credit as a refundable credit for the combined group.

R357-7-12. Certificate Register.

The Certificate Register detailing all transactions involving the Certificates, Certificates of Eligibility, Tax Credit Redemption Certificates and Tax Credit Balance Certificates shall be held and maintained at the Office of the Utah Treasurer.

KEY: capital investments, economic development, tax credits, Utah Capital Investment Board
May 16, 2016 63N-6-203

R392. Health, Disease Control and Prevention, Environmental Services.
R392-100. Food Service Sanitation.
R392-100-1. Authority and Purpose.

(1) This rule is authorized by Sections 26-1-5, 26-1-30, and 26-15-2.

(2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

R392-100-2. Incorporation by Reference.

(1) The Department incorporates by reference the following:

(a) Section 402 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 342.

(b) The 2013 version of the U.S. Public Health Service, Food and Drug Administration, Model Food Code ("Model Code"), Chapters 1 through 8, Annex 1 Parts 8-6 through 8-9, with the stated exceptions and amendments set out below.

(2) Exceptions to Incorporation. The following subsections of the Model Code are not incorporated into this rule:

(a) Subsection 5-203.15(B);
(b) Subsections 5-402.11(B), (C) and (D);
(c) Subsections 8-302.14(D) and (E);
(d) Subsection 8-304.11(K);
(e) Annex 1, Section 8-905.40;
(f) Annex 1, Subparagraphs 8-905.90(A)(1) and (2);
(g) Annex 1, Section 8-909-20;
(h) Annex 1, Subparagraphs 8-911.10(B)(1) and (2).

(3) The following amendments and additions to the Model Code shall be made. All other incorporated provisions remain the same.

(a) In section 1-201.10(B), Terms Defined, a specified definition is added or the definitions or its specific subsections set out in the definition are amended as follows:

(i) Core Item(1) is amended to read:

"(1) "Core Item" also referred to as "non-critical" means a provision in the Model Code that is not designated as a Priority Item or a Priority Foundation Item."

(ii) Food Establishment(2) is amended to add paragraph (C) to read:

"(2)(c) 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 food at the service location. A catering operation does not include routine services offered at the same location, or meal that are individually purchased with the exception of cash bars."

(iii) A definition of Potentially Hazardous Food is added to read:

"Potentially Hazardous Food means the same as Time/Temperature Control for Safety Food."

(iv) Priority Item(1) is amended to read:

"(1) "Priority Item" also referred to as "critical 1" means a provision in the Model Code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with food borne illness or injury and there is no provision that more directly controls the hazard."

(v) Priority Foundation Item(1) is amended to read:

"(1) "Priority Foundation Item" also referred to as "critical 2" means a provision in the Model Code whose application supports, facilitates or enables one or more Priority Items."

(b) After section 2-102.12, a new section is added to read:

"2-102.13 Food Employee Training. Food managers shall be trained and certified as required under Chapter 26-15a, UCA and R392-101. Food employees shall be trained in food safety as required under Section 26-15-5 and shall hold a valid food handler's card issued by a local health department."

(c) Paragraph 3-201.16(A) is amended to read:

"(A) 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."

(d) Section 3-501.17 is amended to include additional paragraph (H):

"(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) or this section; or

(2) be the date of Day 1."

(e) Subparagraph 3-501.19(B)(2) is amended 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 food is removed from temperature control; or

(b) the time before which the food shall be cooked and served at any temperature if ready-to-eat, or discarded."

(f) After Section 4-204-123 a new section is added 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."

(g) Section 5-101.12, shall be amended to add: "The process shall be in accordance with the American Water Works Association (AWWA) C651-2005 for disinfection and testing."

(h) Section 5-202.13 is deleted and replaced to read:

"(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 flood 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, and air gap between the water supply inlet and the flood 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)."

(i) Paragraph 5-203.15(A) is amended to read:

"(A) 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 any copper in the water supply."

(j) Paragraph 5-402.11(A) is amended to read:

"(A) A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed."

(k) Section 8-103.10 Modifications and Waivers is amended to read:

"(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.

(B) A copy of the variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 shall be provided to the Utah Department of Health, Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance."

(l) Section 8-103.11 is amended to add paragraph (D) to read:

"(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."

(m) Paragraph 8-302.14(C) is amended to read:

"A statement specifying whether the food establishment is mobile or stationary and temporary or permanent."

(n) Paragraph 8-304.10(A) is amended to read:

"(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency."

(o) Paragraph 8-401.10(A) is amended 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 and twice in a season for seasonal operations."

(p) Subparagraph 8-401.10(B)(2) is amended to read:

"(2) 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; or"

(q) Section 8-501.10 is amended to read:

"(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and

(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703."

(r) Annex 1, Section 8-601.10 is amended to read:

"Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions."

(s) Annex 1, Section 8-801.30 is amended to read:

"Service is effective at the time the notice is served or when service is made as specified in Paragraph 8-801-20(B)."

(t) Annex 1, Section 8-903.10 is amended to read:

"8-903.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.

(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption.

(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health.

(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping.

(E) Within the limits set in paragraphs (B), (C), and (D) of this section, the regulatory authority may impound, by use of a hold order, molluscan shellfish that are not tagged or labeled according to Paragraph 3-202.18(A) of this code. Other actions may be taken in accordance with Paragraph 3-202.18(B) of this code."

(u) Annex 1, Section 8-903.60 is amended to read:

"The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11."

(v) Annex 1, Section 8-903.90 is amended to read:

"The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated."

(w) Annex 1 Section 8-904.30 heading is amended to read:

"8-904.30 Contents of the Summary Suspension Notice."

(x) Annex 1, Paragraph 8-905.10(A) is amended to read:

"(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties."

(y) Annex 1, Section 8-905.20 is amended to read:

"A response to a hearing notice or a request for a hearing as specified in section 8-905.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-905.30 paragraph (B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any."

(z) Annex 1, Subparagraph 8-905.50(A)(1) is amended to read:

"(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:"

(aa) Annex 1, Subparagraph 8-905.50(A)(2)is amended to read:

"(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-905.10(C) or for matters as determined necessary by the regulatory authority."

(ab) Annex 1, Section 8-905.60 heading is amended to read:

"8-905.60 Notice of Hearing Contents."

(ac) Annex 1, Section 8-905.80 heading is amended to read:

"8-905.80 Expeditious and Impartial Hearing."

(ad) Annex 1, Section 8-905.90 heading is amended to read:

"8-905.90 Confidentiality of Hearing and Proceedings."

(ae) Annex 1, Paragraph 8-905.90(A) is amended to read:

"(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or

mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law."

(af) Amend section 8-906.30 paragraph (B) to read:

"(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer:"

(ag) Annex 1, Section 8-907.60 is amended to read:

"Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer."

(ah) Annex 1, Section 8-908.20 is amended to read:

"Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review."

(ai) Annex 1, Subparagraphs(B)(1) and (2) are deleted and Paragraph 8-911.10(B) is amended to read:

"(B) Any person who violates any provision of this rule may be assessed a civil penalty as provided in section 26-23-6, UCA."

(aj) Annex 1, Section 8-913.10 headline is amended to read:

"8-913.10 Petitions, Penalties, Contempt, and Continuing Violations."

(ak) Annex 1, Paragraph 8-913.10(B) is amended to read:

"In addition to any criminal fines and sentences imposed as specified in Paragraph 8-911.10, or to being enjoined as specified in Paragraph 8-912.10, a person who violates a provision of this code, any rule or regulation adopted in accordance with law related to food establishments within the scope of this code, or to any term, condition, or limitation of a permit issued as specified in Paragraphs 8-303.10 and 8-303.20 is subject to a civil penalty not exceeding $5,000."

(al) Annex 1, Section 8-913.10 is amended to add the paragraph (D) to read:

"(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order."

R392-100-3. Construction Standards.

(1) All parts of the food establishment shall be designed, constructed, maintained, and operated to meet the requirements of Title 15A, State Construction and Fire Codes Act.

KEY: public health, food services, sanitation
May 23, 2016 26-1-30(2)
Notice of Continuation January 20, 2012 26-15-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-307. Eligibility for Home and Community-Based Services Waivers.
R414-307-1. Introduction and Authority.

(1) Section 26-18-3 authorizes this rule. It establishes eligibility requirements for Medicaid coverage for home and community-based service waivers.

(2) The Department adopts 42 CFR 435.217 and 435.726, 2011 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect April 13, 2012, which is incorporated by reference.

R414-307-2. Definitions.

The definitions found in Rules R 414-1 and R414-301 apply to this rule.

R414-307-3. General Requirements for Home and Community-Based Services Waivers.

(1) The Department shall apply the provisions of Sec. 2404 of Pub. L. No. 111 148, Patient Protection and Affordable Care Act, which refers to applying the provisions of Section 1924 of the Social Security Act to married individuals who are eligible for home and community-based waiver services.

(2) To qualify for Medicaid coverage of home and community-based waiver services, an individual must meet:

(a) the medical eligibility criteria defined in the State Waiver Implementation Plan adopted in Rule R414-61, which applies to the specific waiver under which the individual is seeking services, as verified by the operating agency case manager;

(b) the financial and non-financial eligibility criteria for one of the Medicaid coverage groups selected in the specific waiver implementation plan under which the individual is seeking services; and

(c) other requirements defined in this rule that apply to all waiver applicants and recipients, or specific to the waiver for which the individual is seeking eligibility.

(3) The provisions found in Rule R414-304 and Rule R414-305 apply to eligibility determinations under a Home and Community-Based Services (HCBS) waiver, except where otherwise stated in this rule.

(4) The Department shall limit the number of individuals covered by an HCBS waiver as provided in the adopted waiver implementation plan.

(5) The Department adopts and incorporates by reference 42 U.S.C. 1396p(f), in effect February 7, 2016. An individual is ineligible for nursing facility and other long-term care services when an individual has home equity that exceeds the limit set forth in Subsection 1396p(f).

(a) The Department sets that limit at the minimum level allowed under Subsection 1396p(f).

(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group defined in the Medicaid State Plan may receive Medicaid for services other than long-term care services provided under the plan or the HCBS waiver.

(c) An individual who has excess home equity and does not qualify for a community Medicaid eligibility group, is ineligible for Medicaid under both the special income group and the medically needy waiver group.

(6) To determine initial eligibility for a Medicaid coverage group under an HCBS waiver, the eligibility agency must receive a completed waiver referral form from the operating agency or designee. An individual who is not eligible for Medicaid must also complete a Medicaid application.

(a) The waiver referral form must verify the date the individual meets the level-of-care requirements as defined in the State Waiver Implementation Plan.

(b) The following provisions apply for Medicaid eligibility under the HCBS waiver:

(i) The eligibility agency must approve a client's eligibility within 60 days of the level-of-care date stated on the waiver referral form for the waiver referral form to remain valid; otherwise the operating agency or designee must submit a new waiver referral form to the eligibility agency to establish a new level-of-care date;

(ii) Waiver eligibility cannot begin before the level-of-care date stated on a valid waiver referral form, and;

(iii) The eligibility start date must begin within 60 days of the level-of-care date stated on the valid waiver referral form.

(c) The Medicaid agency may not pay for waiver services before the start date of the individual's approved comprehensive care plan, which may not be earlier than the date the individual meets:

(i) the eligibility criteria for a Medicaid coverage group included in the applicable waiver; and

(ii) the level-of-care date verified on a valid waiver referral form.

(7) In the event an individual is not approved for Waiver Medicaid services due to Subsection R414-307-3(6), an individual who otherwise meets Medicaid financial and non-financial eligibility criteria for a Non-Waiver Medicaid coverage group may qualify for Medicaid services other than services under an HCBS waiver.

(8) If an individual's Medicaid eligibility ends and the individual reapplies for Waiver Medicaid, the Department shall establish a process of obtaining approval from the operating agency or designee in which the individual continues to meet medical criteria for the Waiver. The operating agency or designee approval may establish a new date in which eligibility to receive coverage of waiver services may begin.

(9) An individual denied Medicaid coverage for an HCBS waiver may request a fair hearing.

(a) The Department conducts hearings on programmatic eligibility for payment of waiver services.

(b) The Department of Workforce Services conducts hearings on financial eligibility issues for a Medicaid coverage group.

R414-307-4. Special Income Group.

The following provisions set forth financial eligibility requirements for the special income group that apply to individuals seeking Medicaid coverage for services under an HCBS waiver as defined in 42 CFR 435.217.

(1) If the individual's spouse meets the definition of a community spouse, the eligibility agency shall apply the income and resource provisions defined in Section 1924 of the Social Security Act and Section R414-305-3.

(2) If the individual does not have a spouse, or the individual's spouse does not meet the definition of a community spouse, the eligibility agency may only count the individual's resources to determine eligibility. If both members of a married couple who live together apply for waiver services and meet the criteria for the special income group, the eligibility agency shall count one-half of jointly-held assets as available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The eligibility agency may only count income determined under the most closely associated cash assistance program to decide if the individual passes the income eligibility test for the special income group. The eligibility agency may not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the eligibility agency may not count income and resources of the child's parents to decide if the child passes the income and resource tests for the special income group. The eligibility agency shall count actual

contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income cannot exceed three times the payment that would be made to an individual with no income under Subsection 1611(b)(1) of the Social Security Act.

(6) The eligibility agency shall apply the transfer of asset provisions of Section 1917 of the Social Security Act.

(7) The individual's cost-of-care contribution is determined by deducting from the individual's total income, the post-eligibility allowances for the specific waiver for which the individual qualifies.

(8) The eligibility agency shall determine financial eligibility for the special income group for an individual based on the level of care date on a valid waiver referral form as defined in Subsection R414-307-3(2). The eligibility agency shall determine eligibility for prior months using the community Medicaid or institutional Medicaid rules that apply to the individual's situation.

R414-307-5. Medically Needy Waiver Group.

The following sets forth financial eligibility requirements for the medically needy coverage group, and applies to individuals seeking Medicaid coverage for HCBS under the New Choices Waiver or the Individuals with Physical Disabilities Waiver.

(1) If an individual's spouse meets the definition of a community spouse, the eligibility agency shall apply the resource provisions defined in Section 1924 of the Social Security Act and Section R414-305-3 and Section R414-305-4.

(2) If the individual does not have a spouse or the individual's spouse does not meet the definition of a community spouse, the eligibility agency may only count the individual's resources to determine eligibility. When both members of a married couple who live together apply for waiver services and meet the criteria for the medically needy waiver group, the eligibility agency shall count one-half of jointly-held assets available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The eligibility agency may only count income of the individual determined under the most closely associated cash assistance program to decide eligibility for the medically needy waiver group. The eligibility agency may not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the eligibility agency may only count income and resources of the child and may not count income and resources of the child's parents to decide if the child passes the income and resource tests for the medically needy waiver group. The eligibility agency shall count actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income must exceed three times the payment that would be made to an individual with no income under Subsection 1611(b)(1) of the Social Security Act.

(6) To determine eligibility for an individual, the eligibility agency shall apply the income deductions allowed by the community Medicaid category under which the individual qualifies.

(a) The eligibility agency shall compare countable income to the applicable medically needy income limit for a one-person household to determine the individual's spenddown. The individual's medical expenses, including the cost of long-term care services, must exceed the spenddown amount.

To receive Medicaid eligibility, the individual must meet the monthly spenddown as defined in Subsection R414-304-11(9).

(b) The eligibility agency deducts medical expenses incurred by the individual in accordance with Section R414-304-11.

(7) The eligibility agency shall determine an individual's financial eligibility for the medically needy waiver group based on the level of care date on a valid waiver referral form as defined in Subsection R414-307-3(2). The eligibility agency shall determine eligibility for prior months using the community Medicaid or institutional Medicaid rules that apply to the individual's situation.

R414-307-6. New Choices Waiver Eligibility Criteria.

(1) An individual must be 65 years of age or older, or at least 18 through 64 years of age and disabled to be eligible for the New Choices Waiver, as defined in Subsection 1614(a)(3) of the Social Security Act. In accordance with waiver provisions, the eligibility agency considers an individual to be 18 years of age after the month in which the individual turns 18 years old.

(2) A single individual or any married individual with a community spouse, who is eligible under the Special Income Group, may be required to pay a contribution toward the cost of care to receive services under an HCBS waiver. The eligibility agency determines a client's cost-of-care contribution as follows:

(a) The eligibility agency counts all of the client's income unless the income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(b) The eligibility agency deducts the following amounts from the individual's income:

(i) A personal needs allowance equal to 100% of the federal poverty guideline for a household of one;

(ii) For individuals with earned income, up to $125 of gross-earned income;

(iii) Actual monthly shelter costs not to exceed $300. This deduction includes mortgage, insurance, property taxes, rent, and other shelter expenses;

(iv) A deduction for monthly utility costs equal to the standard utility allowance Utah uses under Subsection 5(e) of the Food Stamp Act of 1977. If the waiver client shares utility expenses with others, the allowance is prorated accordingly;

(v) In the case of a married individual with a community spouse, an allowance for a community spouse and dependent family members who live with the community spouse, in accordance with the provisions of Section 1924 of the Social Security Act;

(vi) When an individual has a dependent family member at home and the provisions of Section 1924 of the Social Security Act do not apply,an allowance for a dependent family member that is equal to one-third of the difference between the minimum monthly spousal needs allowance defined in Section 1924 of the Social Security Act and the family member's monthly income. If more than one individual qualifies for an HCBS waiver or institutional Medicaid coverage, and contributes income to the dependent family member, the combined income deductions of these individuals cannot exceed one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income. The eligibility agency shall end this deduction when the dependent family member enters a medical institution;

(vii) Medical and remedial care expenses incurred by the individual in accordance with Section R414-304-11.

(c) The income deduction to provide an allowance to a spouse or a dependent family member may not exceed the amount the individual actually gives to such spouse or dependent family member.

(d) The remaining amount of income after these deductions is the individual's cost-of-care contribution.

(3) The individual must pay the cost-of-care contribution to the eligibility agency each month to receive services under an HCBS waiver.

R414-307-7. Community Supports Home and Community-Based Services Waiver for Individuals with Intellectual Disabilities and Other Related Conditions.

(1) Medicaid eligibility for the Community Supports Home and Community-Based Services waiver is limited to individuals with intellectual disabilities and other related conditions.

(2) An individual's resources must be equal to or less than the Medicaid resource limit applicable to an institutionalized person. The spousal impoverishment resource provisions for married, institutionalized individuals in Section R414-305-3 apply to a married individual.

(3) An eligible individual may be required to pay a contribution toward the cost-of- care to receive home and community-based services. The eligibility agency shall determine an individual's cost-of-care contribution as follows:

(a) The eligibility agency shall count all of the individual's income unless such income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(b) The eligibility agency shall deduct the following amounts from the individual's income:

(i) For an individual with earned income, earned income up to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect April 4, 2012, to determine countable earned income.

(ii) A personal needs allowance for the individual equal to 100% of the federal poverty level for one person.

(iii) In the case of a married individual with a community spouse, a deduction for a community spouse and dependent family members living with the community spouse in accordance with the provisions of Section 1924 of the Social Security Act.

(iv) In the case of an individual who does not have a community spouse or whose spouse is also eligible for institutional or waiver services, an allowance for a dependent family member that is equal to one-third of the difference between the minimum monthly spousal needs allowance defined in Section 1924 of the Social Security Act and the family member's monthly income. If more than one individual who qualifies for a Medicaid home and community-based waiver or institutional Medicaid coverage contributes income to the dependent family member, the combined income deductions of such individuals cannot exceed one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income.

(v) Health insurance premiums for the waiver-eligible recipient paid by the recipient, or medical expenses incurred by the recipient in accordance with Section R414-304-11.

(c) The income deduction to provide an allowance to a spouse or a dependent family member cannot exceed the amount the individual actually gives to such spouse or dependent family member.

(d) The remaining amount of income after such deductions is the individual's cost-of-care contribution.

(4) The individual must pay the contribution to cost-of-care to the eligibility agency each month to receive home and community-based services.

(5) The eligibility agency shall count parental and spousal income only if the individual receives a cash contribution from a parent or spouse.

(6) The provisions of Section R414-305-9 concerning transfers of assets apply to individuals seeking eligibility or receiving benefits under this home and community-based services waiver.

R414-307-8. Home and Community-Based Services Waiver for Individuals Age 65 and Older.

(1) Medicaid eligibility for Home and Community-Based Services for individuals 65 years of age and older is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care.

(2) A client's resources must be equal to or less than the Medicaid resource limit applicable to an institutionalized person. The spousal impoverishment resource provisions for married, institutionalized individuals in Section R414-305-3 apply to a married individual.

(3) An eligible client may be required to pay a contribution toward the cost-of-care to receive home and community-based services. The eligibility agency shall determine a client's cost-of-care contribution as follows:

(a) The eligibility agency shall count all income unless such income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. The eligibility agency shall count a spouse's income only if the client receives a cash contribution from a spouse.

(b) The eligibility agency shall deduct the following amounts from the individual's income:

(i) A personal needs allowance for the individual equal to 100% of the federal poverty level for one person;

(ii) For individuals with earned income, up to $125 of gross-earned income;

(iii) Actual monthly shelter costs not to exceed $300. This deduction includes mortgage, insurance, property taxes, rent, and other shelter expenses;

(iv) A deduction for monthly utility costs equal to the standard utility allowance Utah uses under Section 5(e) of the Food Stamp Act of 1977. If the waiver client shares utility expenses with others, the allowance is prorated accordingly;

(v) In the case of a married individual with a community spouse, a deduction for a community spouse and dependent family members who live with the community spouse in accordance with the provisions of Section 1924 of the Social Security Act;

(vi) In the case of an individual who does not have a community spouse or whose spouse is also eligible for institutional or waiver services, an allowance for a dependent family member that is equal to one-third of the difference between the minimum monthly spousal needs allowance defined in Section 1924 of the Social Security Act and the family member's monthly income. If more than one individual who qualifies for a Medicaid home and community-based waiver or institutional Medicaid coverage contributes income to the dependent family member, the combined income deductions of such individuals cannot exceed one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income;

(vii) Health insurance premiums for the waiver-eligible recipient paid by the recipient, or medical expenses incurred by the recipient in accordance with Section R414-304-11.

(c) The income deduction to provide an allowance to a spouse or a dependent family member cannot exceed the amount the individual actually gives to such spouse or dependent family member.

(d) The remaining amount of income after such deductions is the individual's cost-of-care contribution.

(4) The individual must pay the contribution to cost-of-care to the eligibility agency each month to receive home and community-based services.

(5) The provisions of Section R414-305-9 concerning transfers of assets apply to individuals seeking eligibility or receiving benefits under this home and community-based services waiver.

R414-307-9. Home and Community Based Services Waiver for Technology Dependent/Medically Fragile Individuals.

(1) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the 21st birthday falls.

(2) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department in the Technology Dependent waiver implementation plan, non-financial Medicaid eligibility criteria in Rule R414-302, and a Medicaid category of coverage defined in the waiver implementation plan.

(3) All other eligibility requirements follow the rules for the Community Supports Home and Community-Based Services Waiver found in Section R414-307-7, except for Subsection R414-307-7(1).

R414-307-10. Home and Community-Based Services Waiver for Individuals with Acquired Brain Injury.

(1) To qualify for services under this waiver, the individual must be at least 18 years of age. The person is considered to be 18 years of age in the month in which the 18th birthday falls.

(2) All other eligibility requirements follow the rules for the Home and Community-Based Services Waiver for Aged Individuals found in Section R414-307-8, except for Subsection R414-307-8(1).

R414-307-11. Home and Community-Based Services Waiver for Individuals with Physical Disabilities.

(1) To qualify for the waiver for individuals with physical disabilities, the individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(2) A client's resources must be equal to or less than $2000. The spousal impoverishment resource provisions for married, institutionalized clients in Section R414-305-3 apply to this rule.

(3) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. The eligibility agency counts all income unless the income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. Eligibility is determined counting only the gross income of the client.

(4) The eligibility agency counts a spouse's income only if the client receives a cash contribution from a spouse.

(5) An individual whose income does not exceed 300% of the federal benefit rate may be required to pay a cost-of-care contribution. The following provisions apply to the determination of cost-of-care contribution.

(a) The eligibility agency counts all of the client's income except income that is excluded under other federal laws from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(b) The eligibility agency deducts the maximum allowance available, which is a personal needs allowance equal to 300% of the federal benefit rate payable under Section 1611(b)(1) of the Social Security Act for an individual with no income. No other deductions from income are allowed.

(6) An individual whose income exceeds three times the federal benefit rate payable under Section 1611(b)(1) of the Social Security Act may pay a spenddown to become eligible. To determine the spenddown amount, the income rules and medically needy income standard for non-institutionalized aged, blind or disabled individuals in Rule R414-304 apply except that income is not deemed from the client's spouse.

(7) The provisions of Section R414-305-9 concerning transfers of assets apply to individuals seeking eligibility or receiving benefits under this home and community-based services waiver.

R414-307-12. Home and Community-Based Services Waiver for Individuals with Autism.

(1) An individual must be at least two years of age and under seven years of age to be eligible for the Medicaid Autism Waiver.

(a) The eligibility agency shall treat an individual as being under seven years of age through the month in which the individual turns seven years old.

(b) The agency shall end waiver eligibility after the month in which the individual turns seven years old.

(2) This waiver complies with the provisions of the Community Supports Home and Community-Based Services Waiver and all other eligibility requirements found in Section R414-307-7, except for the requirement of Subsection R414-307-7(1).

R414-307-13. Home and Community-Based Services Waiver for Medically Complex Children.

(1) An individual must be under 19 years of age to be eligible for the HCBS Waiver for Medically Complex Children.

(a) The eligibility agency shall treat an individual as being under 19 years of age through the month in which the individual turns 19 years old.

(b) The agency shall end waiver eligibility after the month in which the individual turns 19 years old.

(2) The agency shall determine whether an individual meets the disability criteria described in Section R414-303-3.

(3) This waiver is in accordance with the provisions of the Community Supports Home and Community-Based Services waiver and all other eligibility requirements found in Section R414-307-7, except for the requirement of Subsection R414-307-7(1).

KEY: eligibility, waivers, special income group
May 20, 2016 26-1-5
Notice of Continuation April 17, 2012 26-18-3

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-5. Emergency Medical Services Training and Certification Standards.
R426-5-100. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8a to provide uniform minimum standards to be met by those providing emergency medical services in the State of Utah; and for the training, certification, and recertification of individuals who provide emergency medical service and for those providing instructions and training to pre-hospital emergency medical care providers.

(2) The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule.

R426-5-200. Scope of Practice.

(1) The Department may certify as an EMR, EMT, AEMT, EMT-IA Paramedic, or EMD an individual who meets the initial certification requirements in this rule.

(2) The Committee adopts as the standard for EMR, EMT, AEMT, EMT-IA, or Paramedic training and competency in the state, the following United States Department of Transportation's National Emergency Medical Services Education Standards.

(3) An EMR, EMT, AEMT, or Paramedic may perform the skills as described in the EMS National Education Standards, to their level of certification, as adopted in this section.

(4) Per Utah Code section 41-6a-523 persons authorized to draw blood/immunity from liability and section 53-10-405 DNA specimen analysis -- Saliva sample to be obtained -- Blood sample to be drawn by a professional. Acting at the request of a peace officer a paramedic may draw field blood samples to determine alcohol or drug content and for DNA analysis. Acting at the request of a peace officer an AEMT may draw field blood samples to determine alcohol or drug content and for DNA analysis if they have received certification pursuant to administrative rule R438-12. A person authorized by this section to draw blood samples may not be held criminally or civilly liable if drawn in a medically acceptable manner.

R426-5-300. Certification.

(1) The Department may certify an EMR, EMT, EMT-IA, AEMT, Paramedic, or EMD for a four-year period.

(2) An individual who wishes to become certified as a EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD shall:

(a) successfully complete a Department-approved EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD course as described in this rule;

(b) be able to perform the functions listed in the National EMS Education Standards adopted in this rule as verified by personal attestation and successful accomplishment by certified EMS Instructors during the course;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD certification;

(d) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(e) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(f) maintain and submit documentation of having completed a Department approved CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for the level of Healthcare Provider Cardiopulmonary Resuscitation (CPR) and Emergency Cardiac Care (ECC); and

(g) submit TB test results as per R426-5-700.

(3) Age requirements:

(a) EMR may certify at 16 years of age or older; and

(b) EMT, AEMT, EMT-IA and Paramedic may certify at 18 years of age or older.

(4) Within 120 days after the official course end date the applicant shall successfully complete the Department written and practical EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD examinations, or reexaminations, if necessary.

(5) Test development, the Department shall:

(a) develop or approve written and practical tests for each certification;

(b) establish the passing score for certification and recertification written and practical tests;

(c) the Department may administer the tests or delegate the administration of any test to another entity; and

(d) the Department may release only to the individual who took the test and to persons who have a signed release from the individual who took the test:

(i) whether the individual passed or failed a written or practical test; and

(ii) the subject areas where items were missed on a written or practical test.

(6) An individual who fails any part of the EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD certification or recertification written or practical examination may retake the examination twice without further course work.

(7) If the individual fails both re-examinations, they shall take a complete EMR, EMT, AEMT, Paramedic, or EMD training course respective to the certification level sought to be eligible for further examination.

(8) The individual may retake the course as many times as they desire, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual shall pass both the practical and written test administered after completion of the new course.

(9) An individual who wishes to enroll in an AEMT, EMT-IA, or Paramedic course shall have as a minimum a Utah EMT certification. This Certification shall remain current until new certification level is obtained.

(10) The Department may extend the time limits for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

R426-5-400. Certification at a Lower Level.

(1) An individual who has taken a Paramedic course, but has not been recommended for certification, may request to become certified at the AEMT levels if:

(a) the paramedic course coordinator submits to the Department a favorable letter of recommendation stating that the individual has successfully obtained the knowledge and skills of the AEMT level as required by this rule; and

(b) the individual successfully completes all requirements for an AEMT.

R426-5-500. Certification Challenges.

(1) The Department may certify as an EMT or AEMT; a registered nurse licensed in Utah, a nurse practitioner licensed in Utah, a physician assistant licensed in Utah, or a physician licensed in Utah who:

(a) is able to demonstrate knowledge, proficiency and competency to perform all the functions listed in the National EMS Education Standards as verified by personal attestation and successful demonstration to a currently certified course

coordinator and an off-line medical director of all cognitive, affective, and psychomotor skills listed in the National EMS Education Standards;

(b) has a knowledge of:

(i) medical control protocols;

(ii) state and local protocols; and

(iii) the role and responsibilities of an EMT or AEMT respectively.

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for adult and pediatric healthcare provider CPR and ECC; and

(d) is 18 years of age or older.

(e) each level shall be challenged sequentially and individually

(2) To become certified, the applicant shall:

(a) submit three letters of recommendation from health care providers attesting to the applicant's patient care skills and abilities;

(b) submit a favorable recommendation from a currently certified course coordinator attesting to competency of all knowledge and skills contained within the National EMS Education Standards;

(c) submit the applicable fees and a completed application, including social security number, signature, and, proof of current Utah license as a Registered Nurse, a Physician Assistant, or a Medical Doctor;

(d) within 120 days after submitting the challenge application, successfully complete the Department written and practical EMT examinations, or reexaminations, if necessary;

(e) the Department may extend the time limit for an individual who demonstrates the inability to meet the requirements within 120 days was due to circumstances beyond the applicant's control;

(f) submit to and pass a background screening clearance as per R426-5-2700; and

(g) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to submitting the application.

R426-5-600. Recertification Requirements.

(1) The Department may recertify an individual for a four-year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification shall:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to and pass a background screening clearance as per R426-5-2700;

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for the level of Adult and Pediatric Healthcare Provider CPR and ECC. CPR shall be kept current during certification;

(d) submit TB test results as per R426-5-700;

(e) successfully complete the Department applicable written and practical recertification examinations, or reexaminations if necessary, within one year prior to expiration; and

(f) provide documentation of completion of Department-approved CME requirements.

(3) The EMR, EMT, AEMT, EMT-IA and Paramedic shall complete the required CME hours, as outlined in the department's Recertification Protocol for EMS Personnel manual and in accordance with the National EMS Education Standards. The hours shall be completed throughout the prior four years.

(4) As well as requirements in (2)(c) The following course completion documentation is required for the specific certification level and may be included in the CME required hours:

(a) EMR 52 hours of CME.

(b) EMT 98 hours of CME.

(c) AEMT 108 hours of CME.

(d) EMT-IA 108 hours of CME.

(e) Paramedic 144 hours of CME; and,

(f) EMD 48 hours of CME.

(5) An EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD may complete CME hours through various methodologies, but 30 percent of the CME hours shall be practical hands-on training.

(6) All CME shall be related to the required skills and knowledge of the EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD's level of certification.

(7) The CME Instructors need not be certified EMS instructors, but shall be knowledgeable in the subject matter.

(8) The EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD shall complete and provide documentation of demonstrating the psychomotor skills listed in the current National EMS Education Standards at their level of certification.

(9) An EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD who is affiliated with an EMS organization should have the organization's designated training officer submit a letter verifying the completion of the recertification requirements. An EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD who is not affiliated with a licensed or designated EMS provider shall submit verification of all recertification requirements directly to the Department.

(10) An AEMT, EMT-IA or Paramedic shall submit a letter from a certified off-line medical director recommending the individual for recertification and verifying the individual has demonstrated proficiency in the psychomotor skills listed in the current National EMS Education Standards at their level of certification.

(11) Each EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD is individually responsible to complete and submit all required recertification material to the Department at one time, no later than 30 days and no earlier than one year prior to the individual's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(12) A licensed or designated EMS provider, or a Department approved entity who provides CME may compile and submit recertification materials on behalf of an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD; however, the individual EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD remains responsible for a timely and complete submission.

(13) The Department may shorten recertification periods. An EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD whose recertification period is shortened shall meet the CME requirements in each of the required and elective subdivisions on a prorated basis by the expiration of the shortened period.

(14) The Department may not lengthen certification periods more than the four-year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expired. If this happens, the individual shall recertify in accordance with Utah Code 39-1-64.

R426-5-700. TB Test Requirements.

(1) All levels of certification and recertification except EMD shall submit a statement from a physician or other health

care provider, confirming the applicant's negative results of a Tuberculin Skin Test or equivalent (TB test) examination conducted within the prior year, or complete the following requirements:

(a) if the test is positive, and there is no documented history of prior Latent TB Infection (LTBI) treatment, the applicant shall see his primary care physician for a chest x-ray (CXR) in accordance with current Center for Disease Control and Prevention (CDC) guidelines and further evaluation; and

(b) Results of CXR and medical history shall be submitted to the Department.

(2) If the CXR is negative, the applicant's medical history will be reviewed by the State EMS Medical Director. For individuals at high risk for developing active TB, treatment will be strongly recommended.

(3) If the CXR is positive, the applicant is considered to be suspect Active TB. Should the diagnosis be confirmed:

(a) Completion of treatment or release by an appropriate physician will be required prior to certification; and

(b) each such case will be reviewed by the State EMS Medical Director.

(4) If an applicant who is required to get treatment refuses the treatment, the Department may deny certification.

(5) A TB test should not be performed on a person who has a documented history of either a prior positive TB test or prior treatment for tuberculosis. The applicant shall instead have a CXR in accordance with current CDC guidelines and provide documentation of negative CXR results to the department.

(6) If the applicant has had prior treatment for active TB or LTBI, the applicant shall provide documentation of this treatment prior to certification. Documentation of this treatment will be maintained by the Department, and needs only to be provided once.

(7) Each such case will be reviewed by the State EMS Medical Director.

R426-5-800. Reciprocity.

(1) The Department may certify an individual as an EMR, EMT, AEMT, Paramedic, or EMD an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience shall:

(a) Submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background screening clearance as per R426-5-2700;

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for the level of Healthcare Provider CPR and ECC;

(d) submit TB test results as per R426-5-700;

(e) successfully complete the Department written and practical EMR, EMT, AEMT, Paramedic, or EMD examinations, or reexaminations, if necessary;

(f) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of the training institution if registered with the National Registry of EMTs; and

(g) provide documentation of completion of 25 hours of continuing medical education (CME) within the prior year. EMDs shall provide documentation of completion of 12 hours of CME within the prior year

(3) The Department may certify as an EMD an individual certified by the National Academy of Emergency Medical Dispatch (NAEMD) or equivalent. An individual seeking reciprocity for certification in Utah based on NAEMD or equivalent certification shall:

(a) Submit documentation of current NAEMD or equivalent certification.

(b) maintain and submit documentation of having completed within the prior two years;

(i) a Department approved CPR course that is consistent with the most current version of the American Heart Association Guidelines for CPR and ECC; and

(ii) a minimum of a two-hour course in critical incident stress management (CISM).

(4) An individual who fails the written or practical EMR, EMT, or AEMT examination three times will be required to complete a Department approved EMR, EMT, or AEMT, course respective to the certification level sought.

(5) A candidate for paramedic reciprocity who fails the written or practical examinations three times can request further consideration of reciprocity after five years if the candidate has worked for an out of state EMS provider and can verify steady employment as a paramedic for at least three of the five years.

R426-5-900. Lapsed Certification.

(1) An individual whose EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD certification has expired for less than one year may, within one year after expiration, complete all recertification requirements, pay a late recertification fee, and successfully pass the written certification examination to become certified. The individual's new expiration date will be four years from the previous expiration date.

(2) An individual whose certification has expired for more than one year shall:

(a) submit a letter of recommendation including results of an oral examination, from a certified off-line medical director, verifying proficiency in patient care skills at the certification level;

(b) successfully complete the applicable Department written and practical examinations;

(c) complete all recertification requirements; and

(d) the individual's new expiration date will be four years from the completion of all recertification materials.

(3) An individual whose certification has lapsed, is not authorized to provide care as an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD until the individual completes the recertification process.

R426-5-1000. Transition to 2009 National EMS Education Standards.

(1) The Department adopts the 2009 National Education Standards as noted in this rule resulting in a need for specific dates for a transition period. These dates shall be as follows:

(a) EMT Basic to EMT January 1, 2012 to January 1, 2016; and

(b) EMT Intermediate to Advanced EMT, October 1, 2011 to September 30, 2013.

(2) Transition for EMT-B to EMT will be accomplished through the Department's written examination as part of the Individual's recertification process during the transition period.

(3) Transition for EMT-I and EMT-IA to AEMT will be accomplished through the Department's written AEMT transition examination during the transition period.

(4) Transition will not change the Individual's recertification date.

(5) During the transition period:

(a) EMT-I and EMT-IA will be deemed equivalent to AEMT certification, in accordance with the respective licensed or designated EMS provider's waivers; and

(b) EMT-B will be deemed equivalent to EMT

certification.

(c) EMT-IA may maintain level of certification as long as employed by a licensed EMT-IA provider.

(6) After the deadline of September 31, 2013 of the AEMT transition period:

(a) an EMT-I who has not yet transitioned will be deemed an EMT, and;

(b) an EMT-IA who is not working for a licensed EMT-IA provider shall be deemed an AEMT.

R426-5-1100. Emergency Medical Care During Clinical Training.

A student enrolled in a Department-approved training program may, under the direct supervision of the course coordinator, an instructor in the course, or a preceptor for the course, perform activities delineated within the training curriculum that otherwise require certification to perform.

R426-5-1200. Instructor Requirements.

(1) The Department may certify as an EMS Instructor an individual who:

(a) meets the initial certification requirements in R426-5-1300; and

(b) is currently certified in Utah as an EMR, EMT, AEMT,EMT-IA, Paramedic, or EMD.

(2) The Committee adopts the United States Department of Transportation's "EMS Instructor Training Program as the standard for EMS Instructor training and competency in the state, which is adopted and incorporated by reference.

(3) An EMS instructor may only teach up to the certification level to which the instructor is certified. An EMS instructor who is only certified as an EMD may only teach EMD courses.

(4) An EMS instructor shall comply with the teaching standards and procedures in the EMS Instructor Manual.

(5) An EMS instructor shall maintain the EMS certification for the level the instructor is certified to teach. If an individual's EMS certification lapses, the instructor certification is invalid until EMS certification is renewed.

(6) The Department may waive a particular instructor certification requirement if the applicant can demonstrate the applicant's training and experience requirements are equivalent or greater to what are required in Utah.

R426-5-1300. Instructor Certification.

(1) The Department may certify an individual who is an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD as an EMS Instructor for a two-year period.

(2) An individual who wishes to become certified as an EMS Instructor shall:

(a) Submit an application and pay all applicable fees;

(b) submit three letters of recommendation regarding EMS skills and teaching abilities;

(c) submit documentation of 15 hours of teaching experience;

(d) successfully complete all required examinations; and

(e) successfully complete the Department-sponsored initial EMS instructor training course.

(3) An individual who wishes to become certified as an EMS Instructor to teach EMR, EMT, AEMT, or paramedic courses shall also:

(a) Provide documentation of 30 hours of patient care within the prior year.

(4) The Department may waive portions of the initial EMS instructor training courses for previously completed Department-approved instructor programs.

R426-5-1400. Instructor Recertification.

(1) An EMS instructor who wishes to recertify as an instructor shall:

(a) maintain current EMS certification; and

(b) attend the required Department-approved recertification training at least once in the two year recertification cycle;

(2) Submit an application and pay all applicable fees.

R426-5-1500. Instructor Lapsed Certification.

(1) An EMS instructor whose instructor certification has expired for less than two years may again become certified by completing the recertification requirements.

(2) An EMS instructor whose instructor certification has expired for more than two years shall complete all initial instructor certification requirements and reapply as if there were no prior certification.

R426-5-1600. Training Officer Certification.

(1) The Department may certify an individual who is a certified EMS instructor as a training officer for a two-year period.

(2) An individual who wishes to become certified as an EMS Training officer shall:

(a) Be currently certified as an EMS instructor;

(b) successfully complete the Department's course for new training officers;

(c) submit an application and pay all applicable fees; and

(d) submit biennially a completed and signed "Training Officer Contract" to the Department agreeing to abide by the standards and procedures in the then current Training Officer Manual.

(3) A training officer shall maintain EMS instructor certification to retain training officer certification.

(4) An EMS training officer shall abide by the terms of the Training Officer Contract, and comply with the standards and procedures in the Training Officer Manual as incorporated into the respective Training Officer Contract.

R426-5-1700. Training Officer Recertification.

(1) A training officer who wishes to recertify as a training officer shall:

(a) Attend a training officer seminar at least once in the two year recertification cycle;

(b) maintain current EMS instructor and EMS certification;

(c) submit an application and pay all applicable fees;

(d) successfully complete any Department-examination requirements; and

(e) submit biennially a completed and signed new "Training Officer Contract" to the Department agreeing to abide by the standards and procedures in the current training officer manual.

R426-5-1800. Training Officer Lapsed Certification.

(1) An individual whose training officer certification has expired for less than two years may again become certified by completing the recertification requirements. The individual's new expiration date will be two years from the old expiration date.

(2) An individual whose training officer certification has expired for more than two year shall complete all initial training officer certification requirements and reapply as if there were no prior certification.

R426-5-1900. Course Coordinator Certification.

(1) The Department may certify an individual as an EMS course coordinator for a two-year period.

(2) An individual who wishes to certify as a course coordinator shall:

(a) Be certified as an EMS instructor;

(b) be a co-coordinator of record for one Department-approved course with a certified course coordinator;

(c) submit a written evaluation and recommendation from the course coordinator in the co-coordinated course;

(d) complete certification requirements within one year of completion of the Department's course for new course coordinators;

(e) submit an application and pay all applicable fees;

(f) complete the Department's course for new course coordinators;

(g) sign and submit annually the "Course Coordinator Contract" to the Department agreeing to abide to the standards and procedures in the then current Course Coordinator Manual; and

(h) maintain EMS instructor certification.

(3) A Course Coordinator may only coordinate courses up to the certification level to which the course coordinator is certified. A course coordinator, who is only certified as an EMD, may only coordinate EMD courses.

(4) A course coordinator shall abide by the terms of the "Course Coordinator Contract" and comply with the standards and procedures in the Course Coordinator Manual as incorporated into the "Course Coordinator Contract."

(5) A Course Coordinator shall maintain an EMS Instructor certification and the EMS certification for the level that the course coordinator is certified to coordinate. If an individual's EMS certification lapses, the Course Coordinator certification is invalid until EMS certification is renewed.

R426-5-2000. Course Coordinator Recertification.

(1) A course coordinator who wishes to recertify as a course coordinator shall:

(a) Maintain current EMS instructor and EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD certification;

(b) coordinate or co-coordinate at least one Department-approved course every two years;

(c) attend a course coordinator seminar at least once in the two year recertification cycle;

(d) submit an application and pay all applicable fees; and

(e) sign and submit biannually a Course Coordinator Contract to the Department agreeing to abide by the policies and procedures in the then current Course Coordinator Manual.

R426-5-2100. Course Coordinator Lapsed Certification.

(1) An individual whose course coordinator certification has expired for less than two year may again become certified by completing the recertification requirements. The individual's new expiration date will be two years from the recertification date.

(2) An individual whose course coordinator certification has expired for more than two year

must complete all initial course coordinator certification requirements and reapply as if there were no prior certification.

R426-5-2200. Course Approvals.

(1) A course coordinator offering EMS training to individuals who wish to become certified as an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD shall obtain Department approval prior to initiating an EMS training course. The Department shall approve a course if:

(a) The applicant submits the course application and fees no earlier than 90 days and no later than 30 days prior to commencing the course;

(b) the applicant has sufficient equipment available for the training or if the equipment is available for rental from the Department;

(c) the Department finds the course meets all the Department rules and contracts governing training;

(d) the course coordinators and instructors hold current respective course coordinator and EMS instructor certifications; and

(e) the Department has the capacity to offer the applicable examinations in a timely manner after the conclusion of the course.

R426-5-2300. Paramedic Training Institutions Standards Compliance.

(1) A person shall be authorized by the Department to provide training leading to the certification of a paramedic.

(2) To become authorized and maintain authorization to provide paramedic training, a person shall:

(a) Enter into the Department's standard paramedic training contract; and

(b) adhere to the terms of the contract, including the requirement to provide training in compliance with the Course Coordinator Manual and the Utah Paramedic Training Program Accreditation Standards Manual.

R426-5-2400. Off-line Medical Director Requirements.

(1) The Department may certify an off-line medical director for a four-year period.

(2) An off-line medical director shall be:

(a) a physician actively engaged in the provision of emergency medical care;

(b) familiar with the Utah EMS Systems Act, Title 26, Chapter 8a, and applicable state rules; and

(c) familiar with medical equipment and medications required.

R426-5-2500. Off-line Medical Director Certification.

(1) An individual who wishes to certify as an off-line medical director shall:

(a) have completed an American College of Emergency Physicians or National Association of Emergency Medical Services Physicians medical director training course or the Department's medical director training course within twelve months of becoming a medical director;

(b) submit an application and;

(c) pay all applicable fees.

(2) An individual who wishes to recertify as an off-line medical director shall:

(a) attend the medical directors annual workshop at least once every four years

(b) submit an application; and

(c) pay all applicable fees.

R426-5-2600. Epinephrine Auto-Injector Use.

(1) Any qualified entities or qualified adults as defined in 26-41-102 in accordance with 26-41-107 shall receive training approved by the Department.

(a) The training shall include:

(i) recognition of life threatening symptoms of anaphylaxis;

(ii) appropriate administration of an epinephrine auto-injector;

(iii) proper storage of an epinephrine auto-injector;

(iv) disposal of an epinephrine auto-injector; and

(v) an initial and annual refresher course.

(2) The annual refresher course requirement may be waived if:

(a) The qualified entities or qualified adults are currently licensed or certified at the EMR or higher level by the State of Utah, or

(b) The approved trainings are the Red Cross and American Heart Association epinephrine auto-injector modules.

(3) Training in the school setting shall be based on approved Department trainings found on http://www.choosehealth.utah.gov/prek-12/school-nurses.php

and provided in accordance with 26-41-104.

(4) All epinephrine auto injectors shall be stored and disposed of following the manufacturer's specifications.

R426-5-2700. Background Screening Clearance for EMS Certification.

(1) The Department shall conduct a background screening on each individual who seeks to certify or recertify as an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD. The Department shall approve EMS certification or recertification upon successful completion of a background screening. Background clearance indicates the individual does not pose an unacceptable risk to public health and safety.

(2) The Department may review relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6- 209;

(c) federal criminal background databases available to the state;

(d) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(e) child abuse or neglect findings described in Section 78A-6-323;

(f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1; and

(g) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions.

(3) If the Department determines an individual is not eligible for certification or recertification based upon the criminal background screening and the individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided in Utah Code Annotated Sections 77-18a.

(4) If the Department determines an individual is not eligible for certification or recertification based upon the non-criminal background screening and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

(5) The individual seeking certification or recertification shall submit the completed application, including fees, prior to submission of finger prints.

(6) Exclusion from certification or recertification.

(a) Criminal Convictions or Pending Charges:

(i) If an individual has been convicted, has pleaded no contest, is subject to a plea in abeyance, or a diversion agreement, for the following offenses within the past 15 years, they shall not be approved for certification or recertification:

(A) any felony or class A under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(B) any felony or class A under Title 76, Chapter 9, Offenses Against Public Order and Decency, Utah Criminal Code excluding sections 103 and 108;

(C) any felony or class A or B under the following Utah Criminal Codes:

(I) 76-9-301.8, Bestiality;

(II) 76-9-702.1, Sexual Battery; and

(III) 76-9-702.5, Lewdness Involving Child.

(ii) If an individual has been convicted or has pleaded no contest for the following offenses, 15 years have passed since the last conviction and the offense cannot be expunged they shall be considered for certification or recertification:

(A) any felony or class A under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(B) any felony or class A under Title 76, Chapter 9, Offenses Against Public Order and Decency, Utah Criminal Code excluding sections 103 and 108;

(C) any felony or class A or B under the following Utah Criminal Codes:

(I) 76-9-301.8, Bestiality;

(II) 76-9-702.1, Sexual Battery; and

(III) 76-9-702.5, Lewdness Involving Child.

(iii) If an individual has been convicted, has pleaded no contest, is subject to a plea in abeyance, or a diversion agreement, for the following offenses, they shall be considered for certification or recertification:

(A) any felony or class A under Utah Criminal Code not listed in R426-5-2700(6)(a)(i).

(B) any class B or C under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(C) any felony, class A under Title 76, Chapter 6, Offenses Against Property, Utah Criminal Code;

(D) any felony or class A under Title 76, Chapter 6a, Pyramid Schemes, Utah Criminal Code;

(E) any felony or class A under Title 76, Chapter 8, Offenses Against the Administration of Government, Utah Criminal Code;

(F) any felony, class A under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code;

(G) any felony, class A, B or C under the following Utah Criminal Codes:

(I) 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; and

(II) 76-10-1301 to 1314, Prostitution;

(III) any felony or class A under Utah Criminal Code 76-10-2301, Contributing to the Delinquency of a Minor;

(H) any felony or class A or B under Utah Motor Vehicles Traffic Code 41-6a-502 and 517.

(I) any felony or class A or B under Utah Occupations and Professions Utah Controlled Substances Act 58-37.

(J) any felony or class A or B under Alcoholic Beverage Control Act 32B-4-409.

(K) any criminal conviction or pattern of convictions that may represent an unacceptable risk to public health and safety.

(iv) An individual seeking certification who has been convicted or has pleaded no contest, is subject to a plea in abeyance, a diversion agreement, a warrant for arrest, arrested or charged for any of the identified offenses in R426-5-2700(6)(a)(iii), shall be considered for certification.

(v) A certified EMS individual who is subject to a warrant of arrest, arrested or charged for any of the identified offenses in R426-5-2700(6)(a)(iii), and after an investigation and Peer Review Board process as established in R426-5-2900, the Department may issue recertification, or suspend or revoke a certification, or place a certification on probation.

(vi) A certified EMS individual who is subject to a warrant of arrest, arrested or charged for any of the identified offenses in R426-5-2700(6)(a)(i), shall immediately have the individuals EMS certification placed on restriction pending the outcome of a CCEU investigation as per the process established in R426-5-2900.

(b) Juvenile Records.

(i) As required by Utah Code Subsection 26-8a-310(5)(b), juvenile court records shall be reviewed if an individual is:

(A) under the age of 28; or

(B) over the age of 28 and has convictions or pending charges identified in R426-5-2600(6)(a).

(ii) Adjudications by a juvenile court may exclude the individual from certification or recertification if the

adjudications refer to an act that, if committed by an adult, would be a felony or a misdemeanor any of the identified offenses in R426-5-2700(6)(a).

(c) Non-Criminal Records.

(i) The Department may deny certification or recertification based on a supported finding from:

(A) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(B) child abuse or neglect findings described in Section 78A-6-323;

(C) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(ii) The Department may deny certification or recertification based on a finding from licensing records of individuals licensed by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions.

(d) Review of Relevant Information.

(i) Results of background screening review, as listed above in R426-5-2700(6)(a)(ii)-(iii), (b) or (c) may be reviewed to determine under what circumstance, if any, the individual may be granted certification or recertification. The following factors may be considered:

(A) types and number;

(B) passage of time;

(C) surrounding circumstances;

(D) intervening circumstances; and

(E) steps taken to correct or improve.

(ii) The Department shall rely on relevant information identified in R426-5-2700(2) as conclusive evidence and may deny certification or recertification based on that information.

(e) Appeal of Department certification decision.

(i) A certified EMS individual may appeal a Department certification decision as listed in R426-5-2700(6)(d)(i)to the CCEU as per the process established in R426-5-2900.

(7) A certified EMS individual who has been arrested, charged, or convicted shall notify the Department CCEU and all employers or affiliated entities who utilize the EMS individual's certification within 7 business days. The certified EMS individual shall also notify the Department of all entities they work for or are affiliated with.

(8) All licensed or designated EMS providers who are notified or become aware of a certified EMS individual arrest, charge or conviction shall notify the Department CCEU within 7 business days.

R426-5-2800. Review and Investigation by the Complaint, Compliance and Enforcement Unit (CCEU).

(1) The CCEU shall review all complaints filed against an EMS provider and a certified EMS individual.

(a) Complaints shall be in writing and submitted on an approved CCEU complaint form.

(b) Every complaint shall have the complainants contact information and be signed by the complainant.

(2) Designated or licensed provider complaints will be investigated by the CCEU.

(a) The CCEU may conduct interviews with the provider.

(b) The CCEU will allow the provider an opportunity to respond to the allegations and to provide supporting witnesses and documentation.

(c) Based on the investigation, the CCEU will make recommendations to the Department's Bureau Director.

(d) If the CCEU recommendation is that the provider is to be placed on probation or suspension, the CCEU shall recommend terms and conditions.

(e) The Department may take action against a designated or licensed provider's license or designation based on the investigative findings.

(f) The Department shall notify the provider in writing of the Department's decision within 30 days of completion of the investigation.

(3) Certified EMS individual complaints will be investigated either by the CCEU or by the Primary Affiliated Provider (PAP).

(a) The CCEU shall investigate the following complaints against a certified EMS individual.

(i) If the CCEU determines that:

(A) the certified EMS individual demonstrates a threat to him or herself or to a coworker,

(B) the certified EMS individual demonstrates a threat to the public health,

(C) the certified EMS individual demonstrates a threat to the safety or welfare of the public,

(D) the certified EMS individual potentially violated R426-5-2800(4), or

(E) the CCEU determines the risk cannot be reasonably mitigated.

(ii) The Department may place the certified EMS individual on a restricted certification while and investigation is pending until terms are reached for a provisional certification using the process outlined in R426-5-2800(5)(e).

(iii) The CCEU may conduct interviews with all parties necessary. The CCEU will gather information and evidence, which may include requiring the certified EMS individual to submit to a drug or alcohol screening or any other appropriate evaluation.

(iv) The certified EMS individual shall have an opportunity to respond to the allegations and to provide supporting witnesses and documentation.

(v) Once the CCEU has completed its investigation it shall submit the report with all findings and recommendations to the Peer Review Board per R426-5-2900 and the Bureau Director for review.

(vi) While waiting for the Peer Review Board process, the Department shall notify the certified EMS individual in writing of the CCEU's recommendation within 30 days of the completion of the investigation.

(b) The Primary Affiliated Provider shall investigate a complaint against the certified EMS individual who the CCEU refers to the PAP.

(i) The PAP investigation shall:

(A) be investigated by the licensed or designated EMS provider's EMS certified medical training officer or designee;

(B) be completed and findings submitted to the CCEU within 30 calendar days from receipt of complaint from the CCEU;

(ii) If the CCEU determines that the PAP actions are insufficient, the CCEU may initiate an investigation of the certified EMS individual which follows the CCEU and the Peer Review Board process.

(4) The Department shall investigate a certified EMS individual's certification or a provider's license or designation for any of the following:

(a) refusal to submit to a drug test requested by the EMS provider or the Department;

(b) failure to report by an individual or any affiliated provider pursuant to 426-5-2700(7)and(8);

(c) non-prescribed use of or addiction to narcotics or drugs;

(d) use of alcoholic beverages or being under the influence of alcoholic beverages at any level while on call or on duty as an EMS personnel or while driving any EMS vehicle;

(e) being under the influence of a prescribed or non-prescribed medication or drug(legal or illegal) while on call or on duty as a certified EMS individual who affects the person's ability to operate or function safely.

(f) failure to comply with the training, licensing, or relicensing requirements for the license or certification;

(g) failure to comply with a contractual agreement as an EMS instructor, a training officer, or a course coordinator. Action taken by the Department on this item shall only be against the individual's ability to perform this particular function and would not affect their base certification;

(h) fraud or deceit in applying for or obtaining a certification;

(i) fraud, deceit, lack of professional competency, patient abuse, or theft in the performance of the duties as a certified EMS individual;

(j) false or misleading information or failure to disclose criminal background information during an investigation or an EMS Personnel Peer Review Board proceeding;

(k) unauthorized use or removal of narcotics, medications, supplies or equipment from a provider, emergency vehicle or health care facility;

(l) performing procedures or skills beyond the level of certification or providers licensure;

(m) violation of laws pertaining to medical practice, drugs, or controlled substances;

(n) mental incompetence as determined by a court of competent jurisdiction;

(o) demonstrated inability and failure to perform adequate patient care;

(p) inability to provide emergency medical services with reasonable skill and safety because of illness, or as a result of any other mental or physical condition, when the individual's condition demonstrates a clear and unjustifiable threat or potential threat to oneself, coworkers, or the public health, safety, or welfare that cannot be reasonably mitigated;

(q) misrepresentation of an individual's level of certification;

(r) failure of a certified EMS individual to display a clearly identifiable level of medical certification during an EMS response;

(s) unsafe, unnecessary or improper operation of an emergency vehicle that would likely cause concern or create a danger to the general public; or

(t) improper or unnecessary use of emergency equipment.

(5) Background screening referrals may be submitted to the CCEU.

(a) The CCEU shall review any case referred under R426-5-2700.

(b) The CCEU may require the certified EMS individual to provide the proper criminal background documentation.

(c) The certified EMS individual shall notify the CCEU of all entities they work for or are affiliated with or that they may become affiliated with in connection to their EMS certification.

(d) Failure to comply with any CCEU requirements may result in disciplinary action against the certified EMS individual's certification.

(e) The CCEU may negotiate with the certified EMS individual and their primary affiliated provider to determine terms and conditions of the EMS individual's provisional certification.

(i) When the Department determines a certified EMS individual's certification will be restricted, the CCEU shall notify both the certified EMS individual and all providers they are affiliated with.

(ii) Within 2 business days of receiving the complaint or referral, the CCEU will attempt to contact and begin negotiations with the primary affiliated provider and the certified EMS individual. All parties will attempt to determine reasonable terms and conditions to the certified EMS individual's certification that would mitigate the concerns alleged in the complaint or referral.

(iii) If terms and conditions are agreed upon between the parties, the certified EMS individual and all affiliated providers shall be notified immediately. This notification will include that the certified EMS individual is under a provisional certification with terms and conditions until the resolution of any criminal charge or the completion of an investigation.

(iv) If the certified EMS individual is not employed or affiliated with a provider or if terms and conditions are not agreed upon, the CCEU will take action necessary to protect the public's best interest.

(v) The CCEU, the certified EMS individual and the provider, if applicable shall sign the terms of the provisional certification and licensure agreement. Non-licensed providers shall be notified of the provisional certification and its terms and conditions.

(vi) Once the provisional certification has been signed, all known EMS providers who the certified EMS individual is affiliated with will be notified immediately by the CCEU.

(vii) If any affiliated EMS provider or the certified EMS individual fail to abide by the terms and conditions of a provisional certification, both may be subject to sanctions by the Department.

(6) Appeal process;

(a) If a provider chooses to appeal an action by the Department, they may appeal to the EMS Committee or pursue a remedy under the Utah Administrative Procedures Act, 63G-4-201.

(i) If the Department action is appealed to the EMS Committee, then the recommendation shall be given to the Department Executive Director for a final decision.

(b) If a certified EMS individual chooses to appeal an action by the Department, they may appeal to the Executive Director, or pursue a remedy under the Utah Administrative Procedures Act, 63G-4-201.

R426-5-2900. Peer Review Board.

The EMS Personnel Peer Review Board is created under section 26-8a-105(4).

(1) Membership of the EMS Personnel Peer Review Board. The EMS Personnel Peer Review Board shall be composed of the following 15 members appointed by the Executive Director of the Department of Health:

(a) One EMS administrative officer representing a licensed provider from a county of the first or second class;

(b) One EMS administrative officer representing a licensed provider from a county of the third through sixth class;

(c) One educational representative from an accredited EMS training program;

(d) One physician certified and practicing as an EMS Medical Director;

(e) One certified EMD;

(f) Two representatives from professional employee groups, one fire based, and one non-fire based;

(g) Two certified quality assurance/medical training officers;

(h) Two non-supervisory certified EMT's;

(i) Two non-supervisory certified AEMT's;

(j) Two non-supervisory certified Paramedics;

(2) EMS Personnel Peer Review Board member terms of office:

(a) Except as provided in subsection (2)(b) members shall be appointed for a six year term beginning no later than October 1, 2015.

(b) The Department shall adjust the length of terms to ensure the terms of members of the board are staggered so approximately one third of the board is appointed every two years.

(c) No member shall serve consecutive full terms.

(d) When a vacancy occurs in the membership of the board for any reason, the Executive Director of the Department shall

appoint the replacement for the balance of the unexpired term. If the balance of the term is greater than 50% of the initial term, then the term shall be considered a full term.

(e) The EMS Personnel Peer Review Board shall organize and select one of its members as Chair and one of its members as Vice Chair to serve no more than two years in each position.

(f) If a board member becomes ineligible for the EMS Personnel Peer Review Board membership position through promotion, an increase in level of certification or transfer out of the employment position which qualified them for the appointment, they shall be replaced at the next two year interval.

(g) An equitable mix of urban and rural members is preferred.

(3) EMS Personnel Peer Review Board Meetings.

(a) Regular meetings of the Peer Review Board shall be scheduled quarterly.

(i) Regular meetings shall be noticed and posted to employers and posted in accordance with the Utah Open and Public Meetings Act, Section 52-4-202.

(ii) Failure to attend three or more consecutive meetings by any member may be grounds for removal of that member and replacement in accordance with subsection (2)(d).

(iii) A member may not receive compensation or benefits from the Department for the member's service. The member may receive per diem and travel expensed in accordance with Department rules and policies.

(4) Once a complaint against a certified EMS individual is investigated, the CCEU shall refer the case and provide a report with all findings and recommendations to the EMS Personnel Peer Review Board.

(5) If the EMS Personnel Peer Review Board chooses to recommend any action that deviates from the CCEU recommendation, the board shall provide written justification for that recommendation.

(6) The EMS Personnel Peer Review Board may make recommendations to the Bureau Director, of:

(a) no Department action, or

(b) a letter of notice, or

(c) probation of the certified EMS individual's certification with specific terms and conditions for a period of time, or

(d) suspension of the certified EMS individual's certification for a defined period of time, or

(e) permanent revocation of the certified EMS individual's certification.

(7) If the Department's Bureau Director modifies the recommended action of the EMS Personnel Peer Review Board, the Director shall attach a written letter of dissent noting the reasoning for the decision. The Bureau Director shall then notify the EMS Personnel Peer Review Board of the dissent and action taken.

(8) The certified EMS individual shall be notified by the Department of any action taken within 15 days of the decision by mail.

(9) An action to restrict, place on probation, suspend, or revoke the certified EMS individual's certification shall be done in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

R426-5-3000. EMS Rules Task Force.

The EMS Rules Task Force is created under section 26-8a-105(3).

(1) Membership of the EMS Rules Task Force. The EMS Rules Task Force shall be composed of the following members appointed by the Executive Director of the Department of Health:

(a) a representative from the Utah Fire Chiefs' Association;

(b) a representative from the EMS Directors' Association;

(c) a EMS medical director;

(d) a privately owned EMS representative;

(e) a rural EMS medical dispatch representative;

(f) a paramedic licensed provider representative;

(g) an urban EMS medical dispatch representative;

(h) an Emergency Nurses Association representative;

(i) a course coordinator from an accredited EMS training program;

(j) an EMS training officer;

(k) a representative from the State EMS Committee;

(l) a trauma center representative.

(2) EMS Rules Task Force member terms of office:

(a) Except as provided in subsection (2)(b) members shall be appointed for a three year term.

(b) The Department shall adjust the length of terms to ensure the terms of members of the EMS Rules Task Force are staggered so approximately one third of the EMS Rules Task Force is appointed every two years.

(c) Members may serve two consecutive full terms.

(d) When a vacancy occurs in the membership for any reason, the Department shall solicit applications for replacement for the balance of the unexpired term. If the balance of the term is greater than 50% of the initial term, then the term shall be considered a full term.

(e) The EMS Rules Task Force may organize and select one of its members as Chair and one of its members as Vice Chair to serve no more than two years in each position.

(f) If a EMS Rules Task Force member becomes ineligible for the EMS Task Force membership position through promotion, an increase in level of certification or transfer out of the employment position which qualified them for the appointment, they shall be replaced at the next two year interval.

(g) An equitable mix of urban and rural members is preferred.

(3) EMS Rules Task Force Meetings.

(a) Regular meetings of the EMS Rules Task Force shall be scheduled as determined by the membership and the Department.

KEY: emergency medical services
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R432. Health, Family Health and Preparedness, Licensing.
R432-550. Birthing Centers.
R432-550-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-550-2. Purpose.

This rule provides health and safety standards for the organization, physical plant, maintenance and operation of birthing centers.

(1) Birthing centers shall consist of one to five birth rooms. Licensure is not required for birthing centers with only one birth room.

(2) Birthing centers provide quality care and services in a pleasing and safe environment to a select low risk population of healthy maternal patients who choose a safe and cost-effective alternative to the traditional hospital childbirth experience.

(3) Birthing center clinical staff assess the maternal patient's risk for obstetric complications through careful review of the patient's records for prenatal screening of potential problems.

(4) Birthing centers recognize the individual needs of, and provide service to, low risk maternal patients expected to have an uncomplicated labor and delivery.

R432-550-3. Time for Compliance.

Facilities governed by these rules shall be in full compliance with these rules at the time of licensure.

R432-550-4. Definitions.

(1) Common definitions R432-1-3.

(2) Special Definitions:

(a) "Birth room" means a room and environment designed, equipped and arranged to provide for the care of a maternal patient and newborn and to accommodate a maternal patient's support person during the process of vaginal birth and recovery. "Birth room" does not include rooms intended for pre-admittance or post-discharge accommodations of maternal patients and their newborns.

(b) "Birthing center" means a freestanding facility, receiving maternal patients and providing care during labor, delivery and immediately after delivery.

(c) "Patient" means a woman or newborn receiving care and services provided by a birthing center during labor, childbirth and recovery.

(d) "Clinical staff" means a licensed maternity care practitioner appointed by the governing authority to practice within the birthing center and governed by rules approved by the governing body.

(e) "Support person" means the individual or individuals selected or chosen by a patient to provide emotional support and to assist her during the process of labor and childbirth.

(f) "Vaginal birth" means the three stages of labor.

(g) "Licensed maternity care practitioner" means a person licensed to provide maternity care services including physicians licensed under Title 58, Chapters 67 and 68, Certified Nurse-Midwives licensed under Title 58, Chapter 44a, Naturopathic Physicians licensed under Title 58, Chapter 71, Licensed Direct-Entry Midwives licensed under Title 58, chapter 77, and others licensed to provide maternity, midwifery, or obstetric care under Title 58.

R432-550-5. General Construction Rules.

See R432-14 Birthing Center Construction Rules.

R432-550-6. Governing Body.

(1) The licensee shall appoint in writing an individual or group to constitute the facility's governing body. The governing body shall:

(a) comply with federal, state and local laws, rules and regulations;

(b) adopt written policies and procedures which describe the functions and services of the birthing center and protect patient rights;

(c) adopt a policy prohibiting discrimination because of race, color, sex, religion, ancestry, or national origin in accordance with Title 13, Chapter 7, Sections 1 through 4.

(d) develop an organizational structure establishing lines of authority and responsibility;

(e) when the governing body is more than one individual, conduct meetings in accordance with facility policy, but at least annually, and maintain written minutes of the meetings;

(f) appoint by name and in writing a qualified administrator;

(g) appoint by name and in writing a qualified director of the clinical staff;

(h) appoint members of the clinical staff and delineate their clinical privileges;

(i) review and approve at least annually a quality assurance program for birthing center operation and patient care provided.

(j) establish a system for financial management and accountability;

(k) provide for resources and equipment to provide a safe working environment for personnel;

(l) act on findings and recommendations of facility-created committees relevant to compliance with these birthing center rules;

(m) ensure that facility patient admission eligibility criteria are strictly applied by clinical staff and are evaluated through quality assurance review in accordance with R432-550-11.

(2) Written policies and procedures shall:

(a) clearly, accurately and comprehensively define the methods by which the facility will be operated to protect the health and safety of patients;

(b) provide for meeting the patient's needs;

(c) provide for continuous compliance with federal, state and local laws, rules and regulations.

(d) Written policies and procedures shall include:

(i) defining the term "low risk maternal patient" which shall include eligibility criteria for birth services offered in the birthing center;

(ii) defining specific criteria, which shall in normally anticipated circumstances render a maternal patient ineligible for birth services or continued care at the birthing center;

(iii) identifying and outlining methods for transferring patients who, during the course of labor or recovery, are determined to be ineligible for birthing center services or continued care at the birthing center, including;

(A) information required for proper care and treatment of the individual(s) transferred, including patient records; and

(B) security and accountability of the personal effects of the individual being transferred.

(iv) planning for consultation, back-up services, transfer and transport of a newborn and maternal patient to a hospital where necessary care is available;

(v) documenting the maternal patient has been informed of the eligibility requirements of an out-of-hospital birthing center labor and birth;

(vi) providing instructions in postpartum and newborn care to the patient and any other family or support person designated by the patient;

(vii) registering birth, fetal death or death certificates in accordance with Title 26, Chapter 2, Sections 5, 13, 14, 23 and rules promulgated pursuant thereto in R436.

(viii) prescribing and instilling a prophylactic solution approved by the Department of Health in the eyes of the newborn in accordance with R386-702-8, Special Measures for the Control of Ophthalmia Neonatorum;

(ix) performing phenylketonuria (PKU) and other disease

tests in accordance with Department of Health Laboratory rules developed pursuant to Section 6;

(x) verifying prenatal laboratory screening to include:

(A) blood type and Rh Factor and provision for appropriate use of Rh immunoglobulin;

(B) hematocrit or hemoglobin;

(C) antibody screen;

(D) rubella; and

(E) syphilis;

(xi) providing for infection control to include:

(A) housekeeping;

(B) cleaning, sterilization, sanitization and storage of supplies and equipment; and

(C) prevention of transmission of infection in personnel, patients and visitors.

R432-550-7. Administrator.

(1) Direction.

(a) The administrator shall be responsible for the overall management and operation of the birthing center.

(b) The administrator shall designate in writing a competent employee to act as administrator in the temporary absence of the administrator.

(c) The administrator's designee shall have authority and responsibility to:

(i) act in the best interests of patient safety and well-being;

(ii) operate the facility in a manner which ensures compliance with these birthing center rules.

(2) Qualifications.

The administrator and administrator's designee shall be knowledgeable:

(a) by education, training or experience in administration and supervision of personnel and qualified as required by facility policy;

(b) in birthing center protocols;

(c) in applicable federal, state and local laws, rules and regulations.

(3) The administrator's responsibilities shall be included in a written job description available for Department review. The administrator shall:

(a) complete, submit and file records and reports required by the Department;

(b) develop and implement facility policies and procedures;

(c) review facility policies and procedures at least annually and report to the governing body on the review;

(d) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority and who have the appropriate Utah license or certificate of completion;

(e) develop, for all employee positions, job descriptions that delineate functional responsibilities and authority; and

(f) review and act on incident or accident reports.

R432-550-8. Clinical Director.

(1) The clinical director shall be responsible for implementing, coordinating and assuring the quality of patient care services.

(2) The clinical director shall:

(a) be currently licensed to practice medicine or midwifery in Utah;

(b) have training and expertise in obstetric and newborn services offered to ensure adequate supervision of patient care services.

(3) The clinical director's responsibilities shall be included in a written job description available for Department review. The clinical director shall:

(a) review and update facility protocols;

(b) review and evaluate clinical staff privileges and revise them as necessary;

(c) recommend, to the governing body, names of qualified licensed health care practitioners to perform approved procedures and the corresponding clinical staff privileges to be granted;

(d) coordinate, direct and evaluate clinical operations of the facility;

(e) evaluate and recommend to the administrator the type and amount of equipment needed in the facility;

(f) ensure that qualified staff are on the premises while patients are admitted to the facility;

(g) ensure clinical staff documentation is recorded immediately and reflects a description of care given;

(h) ensure that planned birthing center services are within the scope of privileges granted to the clinical staff; and

(i) recommend to the administrator appropriate remedial action and disciplinary action, when necessary, to correct violations of clinical protocols.

R432-550-9. Personnel.

(1) The administrator shall employ a sufficient number of qualified professional and support staff who are competent to perform their respective duties, services and functions.

(2) The facility shall maintain written personnel policies and procedures which shall be available to personnel and shall address the following:

(a) content of personnel records;

(b) job descriptions, qualifications and validation of licensure or certificates of completion as appropriate for the position held;

(c) conditions of employment; and

(d) management of employees.

(3) The facility shall maintain personnel records for employees and shall retain personnel records for terminated employees for a minimum of one year following termination of employment.

(4) The facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and patients commensurate with the services offered.

(5) An employee placement health evaluation shall include at a health inventory which shall be completed when an employee is hired. The health inventory shall obtain the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(b) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(6) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Code of Communicable Disease Rules.

(7) 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.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(8) The birthing center personnel must receive documented orientation to the facility and the job for which they are hired.

(9) The birthing center personnel must receive documented ongoing in-service training to include:

(a) an annual review of facility policies and procedures; and

(b) infection control, personal hygiene and each employee's responsibility in the personnel health program.

(10) The birthing center Personnel shall have access to the facility's policy and procedure manuals when on duty.

(11) Personnel shall maintain current licensing, certification or registration appropriate for the work performed and as required by the Utah Department of Commerce.

(a) Personnel shall provide evidence of current licensure, registration or certification to the Department upon request.

(b) Failure to ensure personnel are licensed, certified or registered may result in sanctions to the facility license.

R432-550-10. Contracts.

(1) The licensee shall provide a written contract for any birthing center services that are not provided directly by the facility. The licensee shall ensure that the contracted entity:

(a) performs according to facility policies and procedures;

(b) conforms to standards required by laws, rules and regulations;

(c) provides services that meet professional standards and are timely.

(2) Contracts shall be available for Department review.

R432-550-11. Quality Assurance.

(1) The administrator shall establish a quality assurance committee and program. This committee shall review regularly clinic operations, protocols, policies and procedures, incident reports, infection control, patient care policies and safety.

(2) The quality assurance committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the licensee.

(3) The quality assurance committee shall meet as prescribed in facility policy or at least quarterly and shall keep written minutes available for department review.

(4) The quality assurance program shall include surveillance, prevention and control of infection.

R432-550-12. Emergency and Disaster.

(1) The administrator shall make provisions to maintain a safe environment in the event of an emergency or disaster. An emergency or disaster includes but is not limited to utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic and injury.

(2) The administrator shall educate, train and drill staff to respond appropriately in an emergency in accordance with NFPA 101, Life Safety Code 2009.

(3) The administrator shall review the written emergency procedures at least annually and update them as appropriate.

(4) Personnel shall have ready access to written emergency and disaster plans when on duty.

(5) The administrator shall review the disaster plan with local disaster agencies as appropriate.

(6) The smoking policy shall comply with Title 26, Chapter 38, the "Utah Clean Air Act" and Section 20.7.4 of the Life Safety Code, 2009 edition.

R432-550-13. Patients' Rights.

(1) Written patients' rights shall be established and made available to the patient as determined by facility policy which shall include the following:

(a) to be fully informed, prior to or at the time of admission, and during stay, of these rights and of facility rules that pertain to the patient;

(b) to be fully informed, prior to admission, of the treatment to be received, potential complications and expected outcomes;

(c) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;

(d) to be informed, prior to or at the time of admission and during stay, of services available in the facility and of any expected charges for which the patient may be liable;

(e) to be afforded the opportunity to participate in decisions involving personal health care, except when contraindicated;

(f) to refuse to participate in experimental research;

(g) to be ensured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(h) to be treated with consideration, respect and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-550-14. Clinical Staff and Personnel.

(1) Information identifying current clinical staff and on-call and emergency telephone numbers shall be readily available to birthing center personnel.

(2) Clinical staff and licensed personnel of the birthing center shall be trained in emergency and resuscitation measures for infants and adults, including but not limited to, cardiopulmonary resuscitation certification through an American Heart Association or American Red Cross approved course.

(3) A licensed maternity care practitioner shall be present at each birth and remain until the maternal patient and newborn are stable postpartum.

(4) A second member of the birthing center staff who is licensed or certified to give cardiopulmonary resuscitation shall be present at each birth.

(5) Clinical staff, licensed personnel and support staff shall be provided to meet patients' needs, to ensure patients' safety and to ensure that patients in active labor are attended.

R432-550-15. Clinical Staff.

(1) The attending member of the clinical staff shall ensure the supervision of, and quality of, care delivered to the patient admitted to the facility.

(2) Each patient shall be under the care of a member of the clinical staff.

(3) Clinical staff members shall comply with applicable professional practice laws and written birthing center protocols approved by the clinical director.

(4) The attending member of the clinical staff shall verify in writing that the patient conforms to facility eligibility criteria.

(5) The attending member of the clinical staff shall decide when transfer of a patient to a hospital is necessary and document in writing the conditions warranting the decision.

R432-550-16. Equipment and Supplies.

(1) The administrator shall provide necessary equipment in good working order to meet the patient's needs.

(2) The type and amount of equipment shall be indicated in facility policy and approved by the clinical director.

(3) An emergency cart or tray equipped to allow completion of emergency procedures defined by facility policy shall be readily available.

(a) The facility shall safely store the emergency cart or tray in a designated area that is accessible to authorized personnel.

(b) The facility shall maintain a written log of all upkeep of the emergency cart or tray.

(4) The inventory of supplies shall be sufficient to care for the number of patients registered for care.

(5) Properly maintained equipment and supplies for the maternal patient and the newborn shall include at least the following:

(a) furnishings suitable for labor, birth and recovery;
(b) oxygen with flow meters and masks or equivalent;
(c) bulb suction;
(d) resuscitation equipment to include resuscitation bags, laryngeal mask airways and oral airways;
(e) firm surfaces suitable for use in resuscitating patients;
(f) emergency medications and related supplies and equipment;
(g) fetal monitoring equipment, minimally to include a fetoscope or doppler;
(h) equipment to monitor and maintain the optimum body temperature of the newborn;
(i) a clock indicating hours, minutes and seconds;
(j) sterile suturing equipment and supplies;
(k) adjustable examination light;
(l) infant scale;
(m) a telephone or equivalent two-way communication device capable of reaching other facilities or emergency agencies; and
(n) a delivery log for recording birth data.

R432-550-17. Medications.
(1) Licensed personnel shall prescribe, order and administer medication in accordance with applicable professional practice acts, pharmacy and controlled substances laws.

R432-550-18. Anesthesia Services.
(1) The birthing center shall provide facilities and equipment for the provision of anesthesia services commensurate with the obstetric procedures planned for the facility.
(2) The clinical director shall ensure the safety of anesthesia services administered to patients by clinical staff through written policies and protocols approved by the clinical staff for anesthetic agents, delivery of anesthesia and potential hazards of anesthesia.
(3) A clinical staff member shall monitor patients who receive anesthesia or analgesics.

R432-550-19. Laboratory Services.
(1) The birthing center shall provide direct or contract laboratory and associated services according to facility policy and to meet the needs of patients.
(2) Laboratory reports or results shall be reported promptly to the attending clinical staff member and documented in the patient's medical record.
(3) Laboratory services shall be provided according to CLIA requirements.

R432-550-20. Medical Records.
(1) Medical records shall be complete, accurately documented and systematically organized to facilitate retrieval and compilation of information.
(2) An employee designated by the administrator shall be responsible and accountable for the processing of medical records.
(3) The medical record and its contents shall be safeguarded from loss, defacement, tampering, fires and floods.
(4) Medical records shall be protected against access by unauthorized individuals.
(a) Medical record information shall be confidential.
(b) The birthing center may disclose medical record information only to authorized persons in accordance with federal, state and local laws.
(c) The birthing center shall obtain consent from the patient before releasing client information identifying the client, including photographs, unless release is otherwise allowed or required by law.
(5) Medical records shall be retained for at least five years after the last date of patient care. Records of minors, including records of newborn infants, shall be retained for three years after the minor reaches legal age under Utah law, but in no case less than five years.
(6) The birthing center shall maintain an individual medical record for each patient which shall include but is not limited to written documentation of the following:
(a) admission record with demographic information and patient identification data;
(b) history and physical examination which shall be up-to-date upon the patient's admission;
(c) written and signed informed consent;
(d) orders by a clinical staff member;
(e) record of assessments, plan of care and services provided;
(f) record of medications and treatments administered;
(g) laboratory and radiology reports;
(h) discharge summary for mother and newborn to include a note of condition, instructions given and referral as appropriate;
(i) prenatal care record containing at least prenatal blood serology, Rh factor determination, past obstetrical history and physical examination and documentation of fetal status;
(j) monitoring of progress in labor with assessment of maternal and newborn reaction to the process of labor;
(k) fetal monitoring record;
(l) labor and delivery record, including type of delivery, record of anesthesia and operative procedures if any; and
(m) documentation that the patient is informed of the statement of patient rights.
(7) The records of newborn infants shall include the following:
(a) date and hour of birth, birth weight and length, period of gestation, gender and condition of infant on delivery including Apgar scores and resuscitative measures;
(b) mother's name or unique identification;
(c) record of ophthalmic prophylaxis; and
(d) the identification number of the screening kit used to screen for metabolic diseases, documentation that metabolic screening, genetic screening, PKU or other metabolic disorders reports were completed or refused by the client.

R432-550-21. Housekeeping Services.
(1) The facility shall provide adequate housekeeping services to maintain a clean and sanitary environment.
(2) The facility shall develop and implement written housekeeping policies and procedures.

R432-550-22. Laundry Services.
(1) The facility shall develop and implement written policies and procedures for storage and processing of clean and soiled linen.
(2) Clean linen shall be stored, handled and transported to prevent contamination. Linens shall be maintained in good repair.
(3) Soiled linen shall be handled, transported, stored and processed in a manner to prevent both leakage and the spread of infection.

R432-550-23. Maintenance, Physical Environment, and Safety.
(1) The facility shall provide adequate maintenance service to ensure that facility equipment and grounds are maintained in a clean and sanitary condition and in good repair.
(2) The facility shall develop and implement a written maintenance program which shall include a preventive maintenance schedule for major equipment and physical plant systems.

R432-550-24. General Maintenance.

(1) The facility shall maintain facility buildings, fixtures, equipment and spaces in operable condition.

(2) The facility shall provide a safe, clean and sanitary environment.

(3) The facility shall conduct a pest-control program that ensures the facility is free from vermin.

(4) Direct or contract pest-control programs shall comply with Title 4, Chapter 14.

(5) Documentation shall be maintained for Department review.

R432-550-25. Waste Processing Service.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-550-26. Lighting.

The facility shall provide adequate and comfortable lighting to meet the needs of patients and personnel.

R432-550-27. Limitations of Services.

(1) Birthing center policy shall establish a written risk assessment system to assess the individual risk for each maternal patient.

(2) A clinical staff member shall perform and document a risk assessment for each maternal patient to ensure the patient needs:

(a) fall within the scope of practice and standards of care included in the clinical staff member's professional practice act and within facility policy; and

(b) meet the eligibility requirements for a low risk maternal patient.

(3) Clients shall become ineligible for birthing center care upon development of:

(a) a clinical need for anesthesia or analgesia other than those used in a setting where anesthesia and analgesia are limited in accordance with the facility's written protocols; or

(b) any condition identified intrapartum or postpartum which will be likely to adversely affect the health of the maternal patient or infant and will require management in a general hospital.

R432-550-28. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in Title 26, Chapter 21, Section 11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in Title 26, Chapter 21, Section 16.

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R434. Health, Family Health and Preparedness, Primary Care and Rural Health.
R434-40. Utah Health Care Workforce Financial Assistance Program Rules.
R434-40-1. Purpose.

This rule implements the Utah Health Care Workforce Financial Assistance Program Act, Utah Code, Title 26, Chapter 46; which governs the award of grant funds to geriatric professionals and health care professionals to repay loans taken for educational expenses; and the award of scholarship funds to individuals seeking to become nurse educators in exchange for serving for a specified period of time in a underserved area of the state.

R434-40-2. Authority.

This rule is required by Subsections 26-46-102(3) and 26-46-103(6)(a), and is promulgated under the authority of Section 26-1-5.

R434-40-3. Definitions.

The definitions as they appear in Section 26-46-101 apply. In addition:

(1) "Applicant" means an individual who submits a completed application and meets the application requirements established by the Department for a loan repayment or scholarship grant under the act.

(2) "Approved site" means a site approved by the Department that meets the eligibility criteria established in this rule and that is:

(a) within an underserved area where health care is provided and the majority of patients served are medically underserved due to lack of health care insurance, unwillingness of existing geriatric professional and health care professionals to accept patients covered by government health programs, or other economic, cultural, or language barriers to health care access; or

(b) that is a Utah nursing school or training institution that provides a nursing education course of study to prepare persons for the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act; has a shortage of nurse educator faculty; and meets the criteria established by the Department.

(3) "Committee" means the Utah Health Care Workforce Advisory Committee created by Section 26-1-7.

(4) "Dentist" means an individual licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, to practice dentistry.

(5) "Department" means the Utah Department of Health.

(6) "Educational expenses" means the cost of education in a health care profession, including books, education equipment, fees, materials, reasonable living expenses, supplies, and tuition.

(7) "Educational loan" means a commercial, government, or government-guaranteed loan taken to pay educational expenses.

(8) "Geriatric" means individuals 65 years old and older.

(9) "Geriatric professional" is further defined to mean an individual who has successfully completed one or more of the following:

a. graduate level certification in gerontology from a nationally accredited certifying organization or transcripted program of an accredited academic institution;

b. graduate degree in gerontology;

c. additional training focused on the geriatric or gerontological aspects of the professional's discipline. Additional training may include, but is not limited to, internship, practicum, preceptorship, residency, or fellowship.

(10) "Grant" means a grant of funds under a grant agreement.

(11) "Loan repayment" means a grant of funds under a grant to defray educational loans in exchange for service for a specified period of time at an approved site.

(12) "Mental health therapist" means an individual licensed under:

(a) Title 58, Chapter 60, Mental Health Professional Practice Act, or Title 58, Chapter 61, Psychologist Licensing Act; or

(b) Title 58, Chapter 67, Utah Medical Practice Act, as a physician and surgeon, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as an osteopathic physician and surgeon who is engaged in the practice of mental health therapy.

(13) "Nurse" means an individual licensed to practice nursing in the state under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act.

(14) "Nurse educator" means a nurse employed by a Utah school of nursing providing nursing education to individuals leading to licensure or certification as a nurse.

(15) "Occupational Therapist" means an individual licensed to practice in the state under Title 58, Chapter 42a, Occupational Therapy Practice Act.

(16) "Pharmacist" means an individual licensed to practice in the state under Title 58, Chapter 17b, Pharmacy Practice Act.

(17) "Physical Therapist" means an individual licensed to practice in the state under Title 58, Chapter 24b, Physical Therapy Practice Act.

(18) "Physician" means an individual licensed to practice in the state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(19) "Physician assistant" means an individual licensed to practice in the state under Title 58, Chapter 70a, Physician Assistant Practice Act.

(20) "Postgraduate training" means internship, practicum, preceptorship, or residency training required for geriatric professional and health care professionals licensure and as required by this rule.

(21) "Recipient" means an applicant selected to receive a loan repayment or scholarship grant under the act.

(22) "Scholarship" means a grant of funds for educational expenses given to an individual under a grant agreement where the individual agrees to become a nurse educator in exchange for service for a specified period of time at an approved site that is a Utah nursing school or training institution.

(23) "Service obligation" means professional service rendered at an approved site for a minimum of two years in exchange for a scholarship or loan repayment grant.

R434-40-4. Geriatric Professionals and Health Care Professionals Loan Repayment Grants -- Terms and Service.

(1) To increase the number of geriatric professionals and health care professionals in underserved areas of the state, the Department may provide loan repayment grants to geriatric professional and health care professionals to repay loans taken for educational expenses in exchange for their agreement to serve for a specified period of time at an approved site in the state.

(2) Loan repayment grants may be given only to repay bona fide loans taken by a geriatric professional and health care professional for educational expenses incurred while pursuing an education at an institution that awards a degree that qualifies a geriatric professional and health care professional to practice in his field.

(3) Loan repayment grants under this section may not:

(a) be used to satisfy other obligations owed by the geriatric professional and health care professional under any similar program and may not be used to repay a loan that is in default at the time of application; or

(b) be in an amount greater than the total outstanding balance on the loans taken for educational expenses, including accrued interest.

(4) The Department may not disburse any grant monies under the act until the recipient has performed at least six months of service at the approved site.

R434-40-5. Health Care Professionals Scholarship Grants -- Terms and Service.

(1) To increase the number of nurse educators in underserved areas in the state, the Department may provide scholarship grants to individuals seeking to become nurse educators in exchange for their agreement to serve for a specified period of time at an approved site in the state.

(2) Scholarship grants may be given to pay educational expenses while pursuing an education at an institution accredited by the National League of Nursing that provides training leading to the award of a final degree that qualifies the applicant to become a nurse educator in the state.

(3) Scholarship grants given under this section may not be used to satisfy other obligations owed under any similar program and may not be in an amount more than is reasonably necessary to meet educational expenses.

(4) Scholarship grant recipients shall seek a course of education following a schedule of at least a minimum number of course hours per year as set by the Department which leads to receipt of a degree or completion of specified additional course work in a number of years as established by the Department.

R434-40-6. Loan Repayment Grant Administration.

(1) The Department may award loan repayment grants to repay loans taken for geriatric professionals' and health care professionals' educational expenses. The Department may consider committee recommendations in awarding loan repayment grants.

(2) As requested by the Department, a loan repayment grant recipient shall provide information reasonably necessary for administration of the program.

(3) The Department shall determine the total amount of the loan repayment grant.

(4) The loan repayment grant recipient may not enter into any other similar contract until the recipient satisfies the service obligation described in the grant agreement.

(5) The Department may approve payment to a loan repayment grant recipient for increased federal, state, and local taxes caused by receipt of the loan repayment grant.

(6) The Department shall not pay for an educational loan of a loan repayment grant applicant who is in default at the time of an application.

(7) Before receiving a loan repayment grant, the applicant must enter into a grant agreement with the Department that binds him to the terms of the program.

(8) A loan repayment grant recipient must have a permanent, unrestricted license to practice in his health care specialty in Utah before his first day of service under the grant agreement.

(9) Prior to beginning to fulfill his service obligation, a loan repayment grant recipient must obtain approval from the Department, of the site where he may complete his service obligation.

(10) A loan repayment grant recipient must obtain approval from the Department prior to changing the approved site where he fulfills his service obligation.

R434-40-7. Scholarship Grant Administration.

(1) The Department may award scholarship grant funds to an applicant for a maximum of four years or until earning the nursing postgraduate degree. The Department may consider committee recommendations in awarding scholarship grants.

(2) The Department may pay tuition and fees directly to the school and determine the amount and frequency of direct payments to the student.

(3) The scholarship grant recipient may not enter into a scholarship agreement other than with the program established in Section 26-46-1 until the service obligation agreed upon in the grant agreement with the Department is satisfied.

(4) A scholarship grant recipient must work full-time, as defined by the scholarship grant recipient's employer and as specified in his grant agreement with the Department.

(5) A scholarship grant recipient must serve one year of service obligation for each year he received a scholarship grant under this program, with a minimum of two years required.

(6) The Department may cancel a scholarship grant at any time if it finds that the scholarship grant recipient has voluntarily or involuntarily terminated his schooling, postgraduate training, or if it appears to be a reasonable certainty that the scholarship grant recipient does not intend to practice as required by statute, rules, and grant agreement in an underserved area in the state.

(7) Upon completion of schooling and required postgraduate training, the scholarship grant recipient is responsible for finding employment at an approved site.

(8) A scholarship grant recipient must obtain approval from the Department prior to beginning service obligation at an approved site.

(9) A scholarship grant recipient must obtain approval from the Department prior to changing the approved site where he fulfills his service obligation.

(10) A scholarship grant recipient must obtain an unrestricted license to practice in the state and begin practicing for the agreed upon period of time at an approved site within three months of completion of postgraduate training.

(11) If there is no available approved site upon a scholarship grant recipient's graduation, the recipient shall repay the scholarship grant amount as negotiated in the scholarship grant agreement.

R434-40-8. Eligible Bona Fide Loans.

(1) An eligible bona fide loan is a loan used to pay for educational expenses leading to a qualifying geriatric professional or health care professional degree approved by the Department.

(2) A bona fide loan includes the following:

(a) a commercial loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;

(b) a governmental loan made by a federal, state, county, or city agency;

(c) a loan made by another person that is documented by a contract notarized at the time of the making of the loan, indicative of an arm's length transaction, and with competitive term and rate as other loans available to students; or

(d) a loan that the applicant conclusively demonstrates to the Department is a bona fide loan.

R434-40-9. Full-Time Equivalency Provisions for Recipients.

(1) The loan repayment grant amount is based on the level of full-time equivalency that the loan repayment grant recipient agrees to work.

(2) A loan repayment grant recipient who provides services for at least 40 hours per week may be awarded a loan repayment grant based on the percentages as determined by the Department.

(3) A loan repayment grant recipient who provides services for less than 40 hours per week may be awarded a proportionately lower loan repayment grant based on a full-time equivalency of 40 hours per week.

(4) A scholarship grant recipient must work full-time, as defined by the scholarship grant recipient's employer and as specified in the scholarship grant with the Department.

(5) A scholarship grant recipient must serve one year of service obligation for each year he received a scholarship grant under this program, with a minimum of two years required.

(6) The Department may approve a full-time equivalency of less than 40 hours per week if the applicant's employer can demonstrate that performing less than 40 hours per week at the work site combined with other activities, such as on-call service, is equivalent to a 40 hour work week.

R434-40-10. Approved Site Determination.

(1) The Department shall approve sites based on comprehensive applications submitted by sites.

(2) The criteria the Department may use to determine an approved site for sites that are not nursing schools include:

(a) the percentage of the population with incomes under 200% of the federal poverty level;

(b) the percentage of the population 65 years of age and over;

(c) the percentage of the population under 18 years of age;

(d) the distance to the nearest geriatric professionals or health care professionals and barriers to reaching the geriatric professionals or health care professionals;

(e) ability of the site to provide support facilities and services for the requested geriatric professional or health care professional;

(f) financial stability of the site; and

(g) percent of patients served who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP;

(h) the applicant's policy and practice to provide care regardless of a patient's ability to pay.

(3) The criteria the Department may use to determine an approved site for sites that are nursing schools include:

(a) a demonstrated shortage of nursing educator faculty;

(b) number of and degrees sought by students;

(c) number of students denied for each degree sought;

(d) residency of students;

(e) ability of the nursing school to provide support facilities and services for the requested position to be trained;

(f) faculty to student ratio, including ratios of clinical and classroom instructors;

(g) average class sizes for each of the degrees offered by the school;

(h) school plans to expand enrollment;

(i) diversity of students;

(j) current and projected staffing for the type of instructor requested;

(k) sources and stability of funding to hire and support the prospective instructor; and

(l) distance to the next closest nursing school.

(4) The Department may give preference to sites that provide letters of support from the area served by the prospective employer, such as from:

(a) a majority of practicing health care professionals;

(b) county and civic leaders;

(c) hospital administrators;

(d) business leaders, local chamber of commerce, citizens; and

(e) local health departments.

(5) The Department may give preference to sites located in a service area designated by the Secretary of Health and Human Services as having a shortage of health care professional(s) and that are requesting one of the following medical specialties:

(a) family practice;

(b) internal medicine;

(c) obstetrics/gynecology; and

(d) pediatrics.

(6) To become approved, a site must offer a salary and benefit package competitive with salaries and benefits of other geriatric professionals and health care professionals in the service area.

(7) Other criteria that the site applicant can demonstrate as furthering the purposes of the act.

R434-40-11. Loan Repayment Grant Eligibility and Selection.

(1) In selecting a loan repayment grant recipient for a loan repayment grant award, the Department may evaluate the applicant based on the following selection criteria:

(a) the extent to which an applicant's training in a health care specialty is needed at an approved site;

(b) the applicant's commitment to serve in an underserved area, which can be demonstrated in any of the following ways:

(i) has worked or volunteered at a community or migrant health center, homeless shelter, public health department clinic, worked with geriatric populations, or other service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, has worked with geriatric populations, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for provision of health care services to the medically underserved;

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes his commitment to serve in an underserved area;

(v) the availability of the applicant to begin service, with greater consideration being given to applicants available for service at earlier dates;

(c) the applicant's:

(i) academic standing;

(ii) prior professional or personal experience serving in an underserved area;

(iii) board certification or eligibility;

(iv) postgraduate training achievements;

(v) peer recommendations;

(vi) other facts that the applicant can demonstrate to the Department that establishes his professional competence or conduct;

(d) the applicant's financial need;

(e) the applicant's willingness to serve patients who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP;

(f) the applicant's willingness to provide care regardless of a patient's ability to pay;

(g) the applicant's ability and willingness to provide care; and

(h) the applicant's achieving an early match with an approved site.

(2) To be eligible for a loan repayment grant, an applicant must be a United States citizen or permanent resident.

(3) The Department may consider only grant applicants who apply within 18 months of the applicant's beginning employment at an approved eligible site.

R434-40-12. Scholarship Grant Eligibility and Selection.

(1) In selecting a recipient for a nurse scholarship grant, the Department may evaluate the applicant based on the following selection criteria:

(a) the applicant's commitment to serve in an underserved area, which may be demonstrated in any of the following ways:

(i) has worked or volunteered to serve in an underserved area or service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, or a similar

volunteer agency;

(iii) has cultural or language skills that may be essential for services in an underserved area; and

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes his commitment to the medically underserved.

(b) evidence that the applicant has a license in good standing to practice in the state under Title 58, Chapter 31, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act;

(c) the applicant's academic ability as demonstrated by official transcripts and official school admission test scores;

(d) the applicant's evidence that he has been accepted by or currently attends an accredited school;

(e) the applicant's projected educational expenses;

(f) the applicant's educational, personal, and professional references that demonstrate the applicant's good character and potential to successfully complete school; and

(g) the applicant's essay which is required as part of the scholarship application;

(2) In selecting a scholarship grant recipient, the Department may give preference to applicants who agree to serve for a greater length of time in return for scholarship assistance.

(3) To be eligible to receive a scholarship grant, an applicant must be a United States citizen or permanent resident.

R434-40-13. Loan Repayment and Scholarship Grant Service Obligation.

(1) Before receiving an award under the act, the recipient shall enter into a grant agreement with the state agreeing to the conditions upon which the award is to be made.

(2) The grant agreement shall include necessary conditions to carry out the purposes of the act.

(3) In exchange for financial assistance under the act, the recipient shall serve for a period established at the time of the award, but which may not be for less than 24 months, in an underserved area at a site approved by the Department.

(4) The recipient's service in an underserved area at a site approved by the Department retires the amount owed for the award according to the schedule established by the Department at the time of the award.

(5) Periods of internship, preceptorship, or other clinical training do not satisfy the service obligation under the act.

(6) A scholarship grant recipient must:

(a) be a full-time matriculated student and meet the school's requirements to continue in the program and receive an advanced degree within the time specified in the scholarship grant agreement, unless extended pursuant to R434-40-16;

(b) within three months before and not exceeding one month following graduation or completion of postgraduate training, a scholarship grant recipient shall provide to the Department documented evidence of an approved site's intent to hire him.

(c) upon completion of schooling or postgraduate training, the scholarship grant recipient must find employment at an approved site.

(d) obtain an unrestricted license to practice in Utah prior to beginning to fulfill the service obligation at the approved site.

(e) obtain approval from the Department prior to beginning to fulfill his service obligation at an approved site.

(f) begin employment at the approved site within three months of graduation or completion of postgraduate training.

(g) obtain Department approval prior to changing the approved site where he fulfills his service obligation.

R434-40-14. Loan Repayment Grant Breach, Repayment, and Penalties.

(1) A loan repayment grant recipient under the act who fails to complete the service obligation shall:

(a) pay as a penalty twice the total amount of the loan repayment grant on a prorated basis according to a schedule established by grant agreement with the Department and 12% per annum interest on the unpaid penalty amount; and

(b) costs and expenses incurred in collection, including attorney fees.

(2) A loan repayment grant recipient who breaches his grant agreement with the Department shall begin to repay within 30 days of the breach. The Department may submit for immediate collection all amounts due from a breaching loan repayment grant recipient who does not begin to repay within 30 days.

(3) The breaching loan repayment grant recipient shall pay the total amount due within one year of breaching the grant agreement. The scheduled payback may not be less than four equal quarterly payments.

(4) The amount to be paid back shall be determined from the end of the month in which the loan repayment grant recipient breached the grant as if the recipient had breached at the end of the month.

(5) The breaching loan repayment grant recipient shall pay the total amount due according to a schedule agreed upon with the Department which may not be longer than within four years of breaching the grant agreement.

(6) Amounts recovered and damages collected under this section shall be deposited as dedicated credits to be used to carry out the provisions of the act.

R434-40-15. Scholarship Grant Breach, Repayment, and Penalties.

(1) A scholarship grant recipient who :

(a) fails to finish his professional schooling within the period of time agreed upon with the Department shall within 90 days after the deadline for completing his schooling or within 90 days of his failure to continue his schooling, whichever occurs earlier, shall repay:

(i) all scholarship money received according to a schedule established at the time of the award with the Department;

(ii) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship money calculated from the date each installment was received under the scholarship grant agreement; and

(iii) costs and expenses incurred in collection, including attorney fees;

(b) finishes his schooling and fails to pass the necessary professional certifications or examinations within the time period agreed upon with the Department shall repay:

(i) all scholarship money received according to a schedule established by grant agreement with the Department;

(ii) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship money calculated from the date each installment was received under the scholarship grant; and

(iii) costs and expenses incurred in collection, including attorney fees;

(c) finishes his schooling and fails to take the necessary professional certifications or examinations within the time period agreed upon with the Department shall:

(i) pay as a penalty twice the total amount of the scholarship money on a prorated basis according to a schedule established by grant agreement with the Department and 12% per annum interest on the unpaid penalty amount; and

(ii) costs and expenses incurred in collection, including attorney fees;

(d) finishes his schooling and becomes a health care professional but who fails to fulfill his service obligation shall repay:

(i) twice the total scholarship grant amount received that

is not yet retired by his service on a prorated basis according to a schedule established by grant agreement with the Department;

(ii) 12% per annum interest on the unretired scholarship money calculated from the date each installment was received under the scholarship grant agreement; and

(iii) costs and expenses incurred in collection, including attorney fees.

(2) Amounts recovered and damages collected under this section shall be deposited as dedicated credits to be used to carry out the provisions of the act.

(3) The amount to be paid back shall be determined from the end of the month in which the scholarship grant recipient breached the scholarship grant as if the scholarship grant recipient had breached at the end of the month

(4) The breaching scholarship grant recipient shall pay the total amount due according to a schedule agreed upon with the Department which may not be longer than within four years of breaching the scholarship grant agreement.

R434-40-16. Extension of Loan Repayment and Scholarship Grants.

(1) The Department may extend the period within which the loan repayment grant recipient must complete the service obligation:

(a) if the loan repayment grant recipient has signed a grant agreement for two years the loan repayment grant recipient may apply on or after his first day of service under a loan repayment grant to extend his grant agreement by one year;

(b) a loan repayment grant may be extended only at an approved site;

(c) a loan repayment grant recipient who desires to extend his loan repayment grant must inform the Department in writing of his interest in extending his grant agreement at least six months prior to the end of the current service obligation.

(2) The Department may extend the period within which the scholarship grant recipient must complete his education:

(a) if the scholarship grant recipient has a serious illness;

(b) if the scholarship grant recipient is activated by the military;

(c) for other good cause shown, as determined by the Department.

(3) The service obligation may be extended only at an approved site.

R434-40-17. Release of Recipient from Service Obligation.

(1) The Department may cancel or release, in full or in part, a recipient from his service obligation under the grant agreement without penalty:

(a) if the service obligation has been fulfilled;

(b) if the recipient fails to meet the conditions of the award or if it reasonably appears the recipient will not meet the loan repayment or scholarship grant conditions;

(c) if the recipient is unable to fulfill the service obligation due to permanent disability that prevents the recipient from performing any work for remuneration or profit;

(d) if the recipient dies; or

(e) for other good cause shown, as determined by the Department.

(2) Extreme hardship sufficient to release the recipient without penalty includes:

(a) inability to complete the required schooling or fulfill service obligation due to permanent disability that prevents the recipient from completing school or performing any work for remuneration or profit;

(b) a family member, for which the recipient is the principal care giver, has a life-threatening chronic illness.

(3) The Department may develop alternative service obligation criteria that a loan repayment or scholarship grant recipient may use to fulfill his service obligation if the loan repayment or scholarship grant recipient is unable to fulfill his service obligation at an approved site due to reasons beyond his control.

R434-40-18. Reporting Requirements of Award Recipients.

The Department may require an award recipient to provide information regarding the academic performance, commitment to underserved areas, continuing financial need, service obligation fulfillment, and other information reasonably necessary for the administration of the program during the period the recipient is in school; postgraduate training; and during the period the award recipient is completing the service obligation.

R434-40-19. Reporting Requirements of Approved Sites.

The Department may require the approved site to provide information regarding the award recipients' performance, commitment to underserved areas, service obligation fulfillment, and other information reasonably necessary for the administration of the program during the period the award recipient is completing the service obligation.

KEY: medically underserved, grants, scholarships
June 1, 2016 26-46-102

R450. Heritage and Arts, Administration.
R450-3. Arts and Culture Business Alliance General Program Rules.
R450-3-1. Scope.

The Arts, Culture, and Business Alliance shall operate according to the rules set forth in Section R451-1-1 for management of grants.

KEY: arts and culture, business alliance, heritage and arts, arts and business grants
May 26, 2016 9-6-205

R455. Heritage and Arts, History.
R455-3. Memberships, Sales, Gifts, Bequests, Endowments.
R455-3-1. Scope and Applicability.

Purpose: To establish rules for handling disposition of proceeds and membership dues and make adjustments to prices of various publications.

R455-3-2. Definitions.

1. "board" means the Board of State History which acts as the Board of the Utah State Historical Society;
2. "society" means the Utah State Historical Society;
3. "division" means the Division of State History;
4. "historical magazine" means the Utah Historical Quarterly and Beehive History; and
5. "director" means the director of the Division of State History.

R455-3-3. Sales.

1. Prices for the sale of the historical magazine, books published by the division, microfilm, photos, and other published or facsimile documents shall be established annually by the director in consultation with the board.
2. Proceeds and earned interest from sales shall be deposited with the treasurer of the state as restricted interest bearing, nonlapsing revenue of the Society in accordance with Sections 9-8-206 and 9-8-207.
3. The disposition of the proceeds and earned interest shall be determined by the director in accordance with policy established by the board or in consultation with the board.

R455-3-4. Donations.

1. The society is authorized to receive gifts, grants, donations, bequests devises and endowments of money or property. These monies shall be used in accordance with directions provided by the donor and shall be kept in a separate line account as nonlapsing funds of the society together with earned interest.
2. If the donor makes no indication of the direction or use of the gifts, bequests, donations, devices, and endowments, these funds and interest on these funds shall be retained in a separate line account of the society as nonlapsing funds. Disbursement shall be made by the director in accordance with policy established by the board or in consultation with the board.
3. The board may review, or establish a policy of review and is authorized to receive, any gift, grant, donation, bequest, devise or endowment of money or property but need not.

R455-3-5. Memberships.

1. Membership dues shall be established annually by the director in consultation with the board according to Section 9-8-207(1).
2. Proceeds from memberships shall be kept in a separate line account as nonlapsing funds of the society together with earned interest.
3. Disbursement shall be made by the director in accordance with policy established by the board or in consultation with the board.

KEY: administrative procedures, historical society

1992	**9-8-206**
Notice of Continuation May 5, 2016	**9-8-207**

R455. Heritage and Arts, History.
R455-4. Ancient Human Remains.
R455-4-1. General Authority.

Section 9-8-309 defines the Antiquities Section's duties with respect to recovery, disposition, and determination of ownership of ancient human remains found on nonfederal lands that are not state lands in the State of Utah.

R455-4-2. Purpose.

The primary purpose of the 9-8-309 and this rule is to assure that ancient human remains are given respectful, lawful, and scientifically-sound treatment, that landowners are not harmed or burdened by a discovery of ancient human remains on their property, and to ensure that steps are taken to determine lawful ownership of recovered remains.

R455-4-3. Definitions.

A. "Antiquities Section" means the Antiquities Section of the Division of State History.

B. "ancient" means one-hundred years of age or older.

C. "Native American" means of or relating to a tribe, people, or culture that is indigenous to the United States.

D. "human remains" means all or part of a physical individual, in any stage of decomposition, and objects on or in association with the physical individual that were placed there as part of the death rite or ceremony of a culture.

E. "nonfederal land" includes land owned or controlled by the state, a county, city, or town, an Indian tribe, if the land is not held in trust by the United States for the Indian tribe or the Indian tribe's members, a person other than the federal government; or school and institutional trust lands as defined in Section 53C-1-103.

F. "state land" means any land owned by the state including the state's legislative and judicial branches, departments, divisions, agencies, boards, commissions, councils, and committees, institutions of higher education as defined under Section 53B-3-102. "State land" does not include land owned by a political subdivision of the state, land owned by a school district; private land, school and institutional trust lands as defined in Section 53C-1-103.

G. "excavate" means the scientific disturbance or removal of surface or subsurface archaeological resources by qualified archaeologists in compliance with Title 9, Chapter 8, Part 3, Antiquities.

H. "Director" means the Director of the Utah Division of State History.

I. "local law enforcement agency" means the police department, sheriff's office, or other agency having jurisdiction.

R455-4-4. Response to Notification of a Discovery of Ancient Human Remains.

Human remains that are discovered in conjunction with a project or undertaking subject to Chapter 8, part 4 Historic Sites, or Section 106 of the National Historic Preservation Act, are the responsibility of the project proponents, not the Antiquities Section. The Antiquities Section may however advise, assist and cooperate with responsible agencies in meeting their obligations regarding ancient human remains. For ancient human remains recovered as part of a compliance project from lands covered by 9-8-309, the Antiquities Section will, following appropriate analyses, and if asked, assume the role of the landowner for purposes of determination of ownership as per 9-9-403(8).

Upon notification that ancient human remains have been discovered, the Antiquities Section will gather information and consult as necessary with affected agencies and individuals and within two business days determine a course of action with approval of the landowner(leave remains in place or excavate and remove remains) and notify the affected agencies and individuals of the decision.

R455-4-5. Excavation and Removal of Ancient Human Remains.

If the landowner grants permission for excavation and removal, the Antiquities Section or its agent will conduct respectful and scientifically-sound investigations of the remains and will remove from the site the remains within five days of receiving permission to excavate. The Antiquities Section may establish a perimeter around the area of the remains for the protection of staff and the remains. Only Antiquities Section personnel and those individuals with permission from the Antiquities Section will be allowed into the area surrounding the remains until the excavation is completed. If agreed to by the landowner, an alternative agreement may be reached (as provided for in 9-8-309(3)). If extraordinary circumstances (as defined in 9-8-309(1)(c)(i) exist or arise requiring a time extension, the Antiquities Section will notify the landowner immediately.

If the landowner does not grant permission to excavate and remove the ancient human remains, the Antiquities Section will inform the landowner of the legal restrictions regarding human remains as specified in UCA 76-9-704.

Excavated human remains will be examined. Those determined to be Native American will be subject to Chapter 9, Part 4, Native American Grave Protection and Repatriation Act. For the purposes of determining ownership under the act, for all remains excavated under the provisions of this part by the Antiquities Section, the Section will serve in the capacity of the landowner and will make lineal descent and cultural affiliation ownership determinations in consultation with the Division of Indian Affairs and allowing interested individuals and tribes to assert claims of ownership.

KEY: ancient human remains, archaeology
November 9, 2012 **9-8-309**
Notice of Continuation May 5, 2016 **9-8-403**
76-9-704

R455. Heritage and Arts, History.
R455-8. Preservation Easements.
R455-8-1. Scope and Applicability.

Purpose: to insure the adequate handling of preservation easements and their proper recording in accordance with Sections 9-8-503 and 9-8-504.

R455-8-2. Definitions.

Terms used in this rule are defined as:

1. "historical value" means a property on the State or National Register of Historic Places; and

2. "division" means the Division of State History or the Utah State Historical Society.

R455-8-3. Granting of an Easement to the Division.

A. The division may accept easements under the following conditions:

1. the property is on the National Register or State Register of Historic Places;

2. the easement will be recorded with the proper county recorder's office;

3. the preservation easement will prohibit demolition or alteration not in conformance with the Secretary of Interior's Standards for Rehabilitation;

4. the easement shall be in place for as long as the owner specifies but for no less than that required by IRS rule, if any;

5. the division shall acknowledge within 30 days acceptance or rejection of the easement.

KEY: historic preservation, historic sites

1992	**9-8-503**
Notice of Continuation May 10, 2016	**9-8-504**

R495. Human Services, Administration.
R495-876. Provider Code of Conduct.
R495-876-1. Authority.

The Department of Human Services promulgates this rule pursuant to the rulemaking authority granted in Section 62A-1-111.

R495-876-2. Statement of Purpose.

(1) The Department of Human Services ("DHS") adopts this Code of Conduct to:

(a) Protect its clients from abuse, neglect, maltreatment and exploitation; and

(b) Clarify the expectation of conduct for DHS Providers and their employees and volunteers who interact in any way with DHS clients, DHS staff and the public.

(2) The Provider shall distribute a copy of this Code of Conduct to each employee and volunteer, regardless of whether the employees or volunteers provide direct care to clients, indirect care, administrative services or support services. The Provider shall require each employee and volunteer to read the Code of Conduct and sign a copy of the attached "Certification of Understanding" before having any contact with DHS clients. The Provider shall file a copy of the signed Certificate of Understanding in each employee and volunteer's personnel file. The Provider shall also maintain a written policy that adequately addresses the appropriate treatment of clients and that prohibits the abuse, neglect, maltreatment or exploitation of clients. This policy shall also require the Provider's employees and volunteers to deal with DHS staff and the public with courtesy and professionalism.

(3) This Code of Conduct supplements various statutes, policies and rules that govern the delivery of services to DHS clients. The Providers and the DHS Divisions or Offices may not adopt or enforce policies that are less-stringent than this Code of Conduct unless those policies have first been approved in writing by the Office of Licensing and the Executive Director of the Utah Department of Human Services. Nothing in this Code of Conduct shall be interpreted to mean that clients are not accountable for their own misbehavior or inappropriate behavior, or that Providers are restricted from imposing appropriate sanctions for such behavior.

R495-876-3. Abuse, Neglect, Exploitation, and Maltreatment Prohibited.

Providers shall not abuse, neglect, exploit or maltreat clients in any way, whether through acts or omissions or by encouraging others to act or by failing to deter others from acting.

R495-876-4. General Definitions.

(1) "Client" means anyone who receives services from DHS or from a Provider pursuant to an agreement with DHS or funding from DHS.

(2) "DHS" means the Utah Department of Human Services or any of its divisions, offices or agencies.

(3) "Domestic-violence-related child abuse" means any domestic violence or a violent physical or verbal interaction between cohabitants in the physical presence of a child or having knowledge that a child is present and may see or hear an act of domestic violence.

(4) "Emotional maltreatment" means conduct that subjects the client to psychologically destructive behavior, and includes conduct such as making demeaning comments, threatening harm, terrorizing the client or engaging in a systematic process of alienating the client.

(5) "Provider" means any individual or business entity that contracts with DHS or with a DHS contractor to provide services to DHS clients. The term "Provider" also includes licensed or certified individuals who provide services to DHS clients under the supervision or direction of a Provider. Where this Code of Conduct states (as in Sections III-VII) that the "Provider" shall comply with certain requirements and not engage in various forms of abuse, neglect, exploitation or maltreatment, the term "Provider" also refers to the Provider's employees, volunteers and subcontractors, and others who act on the Provider's behalf or under the Provider's control or supervision.

(6) "Restraint" means the use of physical force or a mechanical device to restrict an individual's freedom of movement or an individual's normal access to his or her body. "Restraint" also includes the use of a drug that is not standard treatment for the individual and that is used to control the individual's behavior or to restrict the individual's freedom of movement.

(7) "Seclusion" means the involuntary confinement of the individual in a room or an area where the individual is physically prevented from leaving.

(8) "Written agency policy" means written policy established by the Provider. If a written agency policy contains provisions that are more lenient than the provisions of this Code of Conduct, those provisions must be approved in writing by the DHS Executive Director and the Office of Licensing.

R495-876-5. Definitions of Prohibited Abuse, Neglect, Exploitation, and Maltreatment.

(1) "Abuse" includes, but is not limited to:

(a) Harm or threatened harm, to the physical or emotional health and welfare of a client.

(b) Unlawful confinement.

(c) Deprivation of life-sustaining treatment.

(d) Physical injury, such as contusion of the skin, laceration, malnutrition, burn, fracture of any bone, subdural hematoma, injury to any internal organ, any injury causing bleeding, or any physical condition which imperils a client's health or welfare.

(e) Any type of unlawful hitting or corporal punishment.

(f) Domestic-violence-related child abuse.

(g) Any Sexual abuse and sexual exploitation including but not be limited to:

(i) Engaging in sexual intercourse with any client.

(ii) Touching the anus or any part of the genitals or otherwise taking indecent liberties with a client, or causing an individual to take indecent liberties with a client, with the intent to arouse or gratify the sexual desire of any person.

(iii) Employing, using, persuading, inducing, enticing, or coercing a client to pose in the nude.

(iv) Engaging a client as an observer or participation in sexual acts.

(v) Employing, using, persuading, inducing, enticing or coercing a client to engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct. This includes displaying, distributing, possessing for the purpose of distribution, or selling material depicting nudity, or engaging in sexual or simulated sexual conduct with a client.

(vi) Committing or attempting to commit acts of sodomy or molestation with a client.

(2) "Neglect" includes but is not limited to:

(a) Denial of sufficient nutrition.

(b) Denial of sufficient sleep.

(c) Denial of sufficient clothing, or bedding.

(d) Failure to provide adequate client supervision; including situations where the Provider's employee or volunteer is a sleep or ill on the job, or is impaired due to the use of alcohol or drugs.

(e) Failure to provide care and treatment as prescribed by the client's services, program or treatment plan, including the failure to arrange for medical or dental care or treatment as

prescribed or as instructed by the client's physician or dentist, unless the client or the Provider obtains a second opinion from another physician or dentist, indicating that the originally-prescribed medical or dental care or treatment is unnecessary.

(f) Denial of sufficient shelter, where shelter is part of the services the Provider is responsible for providing to the client.

(g) Educational neglect (i.e. willful failure or refusal to make a good faith effort to ensure that a child in the Provider's care or custody receives an appropriate education).

(3) "Exploitation" will includes but is not limited to:

(a) Using a client's property without the client's consent or using a client's property in a way that is contrary to the client's best interests, such as expending a client's funds for the benefit of another.

(b) Making unjust or improper use of clients or their resources.

(c) Accepting gifts in exchange for preferential treatment of a client or in exchange for services that the Provider is already obliged to provide to the client.

(d) Using the labor of a client for personal gain.

(e) Using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, except where such use is consistent with standard therapeutic practices and is authorized by DHS policy or the Provider's contract with DHS.

(i) Examples:

(A) It is not "exploitation" for a foster parent to assign an extra chore to a foster child who has broken a household rule, because the extra chore is reasonable discipline and teaches the child to obey the household rules.

(B) It is not "exploitation" to require clients to help serve a meal at a senior center where they receive free meals and are encouraged to socialize with other clients. The meal is a non-monetary compensation, and the interaction with other clients may serve the clients' therapeutic needs.

(C) It is usually "exploitation" to require a client to provide extensive janitorial or household services without pay, unless the services are actually an integral part of the therapeutic program, such as in "clubhouse" type programs that have been approved by DHS.

(4) "Maltreatment" includes but is not limited to:

(a) Physical exercises, such as running laps or performing pushups, except where such exercises are consistent with an individual's service plan and written agency policy and with the individual's health and abilities.

(b) Any form of Restraint or Seclusion used by the Provider for reasons of convenience or to coerce, discipline or retaliate against a client. The Provider may use a Restraint or Seclusion only in emergency situations where such use is necessary to ensure the safety of the client or others and where less restrictive interventions would be ineffective, and only if the use is authorized by the client's service plan and administered by trained authorized personnel. Any use of Restraint or Seclusion must end immediately once the emergency safety situation is resolved. The Provider shall comply with all applicable laws about Restraints or Seclusions, including all federal and state statutes, regulations, rules and policies.

(c) Assignment of unduly physically strenuous or harsh work.

(d) Requiring or forcing the individual to take an uncomfortable position, such as squatting or bending, or requiring or forcing the individual to repeat physical movements as a means of punishment.

(e) Group punishments for misbehaviors of individuals.

(f) Emotional maltreatment, bullying, teasing, provoking or otherwise verbally or physically intimidating or agitating a client.

(g) Denial of any essential program service solely for disciplinary purposes.

(h) Denial of visiting or communication privileges with family or significant others solely for disciplinary purposes.

(i) Requiring the individual to remain silent for long periods of time for the purpose of punishment.

(j) Extensive withholding of emotional response or stimulation.

(k) Denying a current client from entering the client's residence, where such denial is for disciplinary or retaliatory purposes or for any purpose unrelated to the safety of clients or others.

R495-876-6. Provider's Compliance with Conduct Requirements Imposed by Law, Contract or Other Policies.

In addition to complying with this Code of Conduct, the Provider shall comply with all applicable laws (such as statutes, rules and court decisions) and all policies adopted by the DHS Office of Licensing, by the DHS Divisions or Offices whose clients the Provider serves, and by other state and federal agencies that regulate or oversee the Provider's programs. Where the Office of Licensing or another DHS entity has adopted a policy that is more specific or restrictive than this Code of Conduct, that policy shall control. If a statute, rule or policy defines abuse, neglect, exploitation or maltreatment as including conduct that is not expressly included in this Code of Conduct, such conduct shall also constitute a violation of this Code of Conduct. See, e.g., Title 62A, Chapter 3 of the Utah Code (definition of adult abuse) and Title 78A, Chapter 6 and Title 76, Chapter 5 of the Utah Code (definitions of child abuse).

R495-876-7. The Provider's Interactions with DHS Personnel and the Public.

In carrying out all DHS-related business, the Provider shall conduct itself with professionalism and shall treat DHS personnel, the members of the Provider's staff and members of the public courteously and fairly. The Provider shall not engage in criminal conduct or in any fraud or other financial misconduct.

R495-876-8. Sanctions for Non-compliance.

If a Provider or its employee or volunteer fail to comply with this Code of Conduct, DHS may impose appropriate sanctions (such as corrective action, probation, suspension, disbarment from State contracts, and termination of the Provider's license or certification) and may avail itself of all legal and equitable remedies (such as money damages and termination of the Provider's contract). In imposing such sanctions and remedies, DHS shall comply with the Utah Administrative Procedures Act and applicable DHS rules. In appropriate circumstances, DHS shall also report the Provider's misconduct to law enforcement and to the Provider's clients and their families or legal representatives (e.g., a legal guardian). In all cases, DHS shall also report the Provider's misconduct to the licensing authorities, including the DHS Office of Licensing.

R495-876-9. Providers' Duty to Help DHS Protect Clients.

(1) Duty to Protect Clients' Health and Safety. If the Provider becomes aware that a client has been subjected to any abuse, neglect, exploitation or maltreatment, the Provider's first duty is to protect the client's health and safety.

(2) Duty to Report Problems and Cooperate with Investigations. Providers shall document and report any abuse, neglect, exploitation or maltreatment and exploitation as outlined in this Code of Conduct, and they shall cooperate fully in any investigation conducted by DHS, law enforcement or other regulatory or monitoring agencies.

(a) Except as provided in subsection(b) below, Providers shall immediately report abuse, neglect, exploitation or maltreatment by contacting the local Regional Office of the

appropriate DHS Division or Office. During weekends and on holidays, Providers shall make such reports to the on-call worker of that Regional Office.

(i) Providers shall report any abuse or neglect of disabled or elder adults to the Adult Protective Services intake office of the Division of Aging and Adult Services.

(ii) The Provider shall make all reports and documentation about abuse, neglect, exploitation, and maltreatment available to appropriate DHS personnel and law enforcement upon request.

(b) Providers shall document any client injury (explained or unexplained) that occurs on the Providers' premises or while the client is under the Provider's care and supervision, and the Provider shall report any such injury to supervisory personnel immediately. Providers shall cooperate fully in any investigation conducted by DHS, law enforcement or other regulatory or monitoring agencies. If the client's injury is extremely minimal, the Provider has 12 hours to report the injury. The term "extremely minimal" refers to injuries that obviously do not require medical attention (beyond washing a minor wound and applying a band-aid, for example) and which cannot reasonably be expected to benefit from advice or consultation from the supervisory personnel or medical practitioners.

(i) Example: If a foster child falls off a swing and skins her knee slightly, the foster parent shall document the injury and report to the foster care worker within 12 hours.

(ii) Example: If a foster child falls off a swing and sprains or twists her ankle, the foster parent shall document the injury and report it immediately to supervisory personnel because the supervisor may want the child's ankle X-rayed or examined by a physician.

(3) Duty to Report Fatalities and Cooperate in Investigations and Fatality Reviews. If a DHS client dies while receiving services from the Provider, the Provider shall notify the supervising DHS Division or Office immediately and shall cooperate with any investigation into the client's death. In addition, some Providers are subject to the Department of Human Services' Fatality Review Policy. (See the "Eligibility" section of DHS Policy No. 05-02 for a description of the entities subject to the fatality review requirements. A copy of the policy is available at the DHS web site at: http://www.hspolicy.utah.gov) If the Provider is subject to the Fatality Review Policy, it shall comply with that policy (including all reporting requirements) and the Provider shall cooperate fully with any fatality reviews and investigations concerning a client death.

(4) Duty to Display DHS Poster. The Provider shall prominently display in each facility a DHS poster that notifies employees of their responsibilities to report violations of this Provider Code of Conduct, and that gives phone numbers for the Regional Office or Intake Office of the relevant DHS Division(s). Notwithstanding the foregoing, if the Provider provides its services in a private home and if the Provider has fewer than three employees or volunteers, the Provider shall maintain this information in a readily-accessible place but it need not actually display the DHS poster. DHS shall annually provide the Provider with a copy of the current DHS poster or it shall make the poster available on the DHS web site: http://www.hspolicy.utah.gov/pdf/poster_provider_code_of_conduct.pdf.

KEY: social services, provider conduct*
August 26, 2008 62A-1-110
Notice of Continuation May 31, 2016 62A-1-111

R495. Human Services, Administration.
R495-880. Adoption Assistance.
R495-880-1. Regional Adoption Assistance Advisory Committee.

(1) There is established, within each region of the Division of Child and Family Services an adoption assistance advisory committee to review and make recommendations to the division on individual requests for supplemental adoption assistance. For purposes of this rule, supplemental adoption assistance means the same as is defined in Utah Code Annotated Section 62A-4a-902. Each advisory committee shall be comprised of the following members:

(a) an expert in adoption policy and practice, as determined by the division;

(b) an adoptive parent;

(c) a division representative;

(d) a foster parent; and

(e) an adoption caseworker.

(2) The advisory committees established pursuant to Subsection (1) of this rule shall review individual requests for supplemental adoption assistance that meet a threshold amount established by policy by the Board of Child and Family Services in R512-43.

KEY: adoption, child welfare
August 15, 2001 62A-4a-905
Notice of Continuation May 31, 2016

R495. Human Services, Administration.
R495-885. Employee Background Screenings.
R495-885-1. Authority and Purpose.

(1) This Rule is authorized by Sections 62A-1-118 and 62A-2-120.

(2) This Rule clarifies the standards for Department of Human Services' employee and volunteer background screening.

(3) This Rule is created to hold DHS employees and volunteers to high standards of conduct, protect children and vulnerable adults, and promote public trust.

R495-885-2. Definitions.

(1) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(2) "Child" is defined in Section 62A-2-101.

(3) "Department" or "DHS" means the Department of Human Services.

(4) "Direct Access" is defined in Section 62A-2-101.

(5) "Director" means the Director of each DHS Office or Division, and includes the Director's designee.

(6) "Directly Supervised" is defined in 62A-2-101.

(7) "Employee" means a prospective employee who has received a job offer from DHS or a current employee of DHS, and includes paid interns.

(8) "Executive Director" means the Executive Director of DHS or the Deputy Director designated by the Executive Director.

(9) "FBI rap back" is defined in Section 53-10-108.

(10) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards.

(11) "Volunteer" means an individual who donates services without pay or other compensation, except expenses actually and reasonably incurred and pre-approved by the supervising agency, and includes unpaid interns.

(12) "Vulnerable adult" is defined in Section 62A-2-101.

R495-885-3. Employees and Volunteers with Direct Access.

(1) The Department finds that a criminal history or identification as a perpetrator of abuse or neglect is directly relevant to an individual's employment or volunteer activities within DHS.

(2) All Department employees and volunteers who may have direct access and who may not be directly supervised at all times must have an annual background screening clearance in accordance with Sections 62A-1-118 and 62A-2-120, which shall include retention of fingerprints by BCI for FBI rap back.

(3) Department employees and volunteers who may have direct access and may not be directly supervised at all times shall:

(a) Submit a background screening application to their respective Division or Office on a form created by the Department; and

(b) Submit fingerprints to the Department via a DHS-operated live-scan machine or;

two ten-print fingerprint cards produced by a law enforcement agency, an agency approved by the BCI, or another entity pre-approved by the Department

(c) not be required to submit fingerprints to DHS if they have submitted fingerprints for retention

(i) to BCI for an Office or Division clearance, and the Office or Division ensures that the minimum standards set forth in Section 62A-2-120 are enforced; or

(ii) to the Department of Health for employees and volunteers of the Utah State Developmental Center per code, or

(iii) to the Office of Licensing as an individual associated with a license as long as the fingerprints are retained by BCI for FBI rap back.

(4) The DHS Office of Licensing shall access information to perform the background checks described in Sections 62A-1-118 and 62A-2-120.

(a) The DHS Office of Licensing will not duplicate fingerprint-based criminal background checks on Department employees or volunteers who have a current fingerprint-based criminal background clearance pursuant to R495-885-3(3).

(b) The fingerprints submitted by DHS employees who are required to obtain a background screening pursuant to Section 62A-2-120 as an individual associated with a licensee shall be utilized to perform the screening required by this R495-885. Screening results shall be reviewed in accordance with both the standards required by Section 62A-2-120 and this R495-885.

(5) Except as described in R495-885-5, Department employees and volunteers who would automatically be denied a background screening approval as described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(6) Except as described in R495-885-5, Department employees and volunteers who have any offense or finding described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

(7) Each Division and Office shall develop and implement a protocol to ensure renewal background screening applications are submitted to the DHS Office of Licensing annually for all database systems that are not included in the FBI rap back fingerprint process.

R495-885-4. Employees and Volunteers with No Direct Access.

(1) The Department finds that a criminal history is directly relevant to an individual's employment activities within DHS.

(2) The Department is not authorized to perform the checks described in Sections 62A-1-118 and 62A-2-120 for employees with no direct access.

(3) Each Division and Office will identify which of their positions includes no potential for direct access that is not directly supervised.

(4) Each employee who does not potentially have direct access shall submit an "Authorization and Waiver for Criminal History Check" form to a Department of Human Resources Management, DHS Field Office authorizing DHRM to perform name-based background checks.

(5) Except as described in R495-885-5, Department employees who would automatically be denied a background screening approval based upon the offenses described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(6) Except as described in R495-885-5, Department employees who have any offense described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

(7) Volunteers who do not have a background screening clearance pursuant to R495-885-3 will be directly supervised.

R495-885-5. Background Screening Review.

(1) The Office of Licensing or the Department of Human Resources Management, DHS Field Office shall notify the Director of the background screening results of each prospective employee, employee, and volunteer.

(2) The Director shall review the background screening results of each prospective employee, employee, and volunteer.

(3) Review criteria for prospective or probationary employees and volunteers:

(a) Automatic denial offenses outlined in 62A-2-120(5)(a) are not eligible for review by the DHS Employee and Volunteer Comprehensive Review Committee:

(b) The Director has sole discretion to determine whether to deny employment or refer a prospective or probationary employee or volunteer with the following background screening

findings to the DHS Employee and Volunteer Comprehensive Review Committee:

(i) All other circumstances outlined in 62A-2-120(6)(a), or

(ii) any MIS supported or substantiated findings (for individuals with direct access only)

(c) The determinations of the Director and the DHS Employee and Volunteer Comprehensive Review Committee are final, and a prospective or probationary employee or volunteer has no right to appeal.

(4) Review process for non-probationary employees:

(a) The following background screening findings shall be submitted to the Director:

(i) Automatic denial offenses outlined in 62A-2-120(5)(a),

(ii) All other circumstances outlined in 62A-2-120(6)(a), or

(iii) any MIS supported or substantiated findings.

(b) The Director may consult with the Executive Director and/or the Office of Licensing, and shall evaluate whether the non-probationary employee may present a risk of harm to a child or vulnerable adult or does not meet DHS high standards of conduct or promote public trust.

(c) The Executive Director may, in his/her sole discretion, approve the non-probationary employee for continued employment, including defining permissible and impermissible DHS-wide work-related activities, or consult the Department of Human Resource Management regarding termination of employment. The determination of the Executive Director is final.

R495-885-6. DHS Employee and Volunteer Comprehensive Review Committee.

(1) The Director of the following Department divisions and offices shall appoint one member and one alternate to serve on the DHS Employee and Volunteer Comprehensive Review Committee:

(a) the Executive Director's Office;

(b) the Division of Aging and Adult Services;

(c) the Division of Child and Family Services;

(d) the Division of Juvenile Justice Services;

(e) the Division of Services for People with Disabilities;

(f) the Division of Substance Abuse and Mental Health;

(g) the Office of the Public Guardian; and

(i) the Office of Licensing.

(2) DHS Employee and Volunteer Comprehensive Review Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office of Licensing member shall chair the DHS Employee and Volunteer Comprehensive Review Committee as a non-voting member.

(4) Five voting members shall constitute a quorum.

(5) The DHS Employee and Volunteer Comprehensive Review Committee shall conduct a comprehensive review of a prospective or probationary employee or volunteer's background screening application, criminal history records, abuse, neglect or exploitation records, and related circumstances, in accordance with Section 62A-2-120(6).

R495-885-7. DHS Employee and Volunteer Comprehensive Review Process.

(1) The Office or Division may inform the prospective or probationary employee or volunteer that the results of a background screening indicate they have a criminal history or supported or substantiated findings of abuse or neglect, and the employee or volunteer may:

(a) voluntarily withdraw a pending employment or volunteer application;

(b) voluntarily terminate probationary employment; or

(c) request further review and submit any written statements or records that the employee or volunteer wants the DHS Employee and Volunteer Comprehensive Review Committee to consider, including but not limited to non-redacted documents relating to the results, the nature and seriousness of the offense or incident; the circumstances under which the offense or incident occurred; the age of the employee or volunteer when the offense or incident occurred; whether the offense or incident was an isolated or repeated incident; whether the offense or incident directly relates to abuse of a child or vulnerable adult, evidence of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed.

(i) an employee or volunteer who wants the DHS Employee and Volunteer Comprehensive Review Committee to consider documents relating to the screening results shall submit the documents to the Office or Division within 15 calendar days of notification by the Office of Division.

(2) The Office or Division shall gather information from a prospective or probationary employee or volunteer who requests review and submit it to the DHS Employee and Volunteer Comprehensive Review Committee.

(a) The Division may redact any personally identifying information of the prospective or probationary employee or volunteer that does not compromise the content of the review.

(3) The DHS Employee and Volunteer Comprehensive Review Committee shall evaluate the information provided by the Office or Division and any information provided by the prospective or probationary employee or volunteer. The DHS Employee and Volunteer Comprehensive Review Committee shall consider:

the date of the offense or incident;

(a) the nature and seriousness of the offense or incident;

(b) the circumstances under which the offense or incident occurred;

(c) the age of prospective or probationary employee or volunteer when the offense or incident occurred;

(d) whether the offense or incident was an isolated or repeated incident;

(e) whether the offense or incident directly relates to abuse of a child or vulnerable adult,

(f) whether approval would likely create a risk of harm to a child or a vulnerable adult;

(g) whether the information may be relevant to the employment or volunteer activities of that person;

(h) whether the relevant information should be relied upon to deny employment or volunteer activities, and

(i) that the background screening approval may be transferred to other DHS Offices or Divisions.

(4) The DHS Employee and Volunteer Comprehensive Review Committee may approve the background screening of a prospective or probationary employee or volunteer only after a simple majority of the voting members of the DHS Employee and Volunteer Comprehensive Review Committee determines that approval will not likely create a risk of harm to a child or vulnerable adult or the prospective employee does not meet DHS high standards of conduct or promote public trust, and identify permissible and impermissible DHS-wide work-related activities.

(5) The DHS Employee and Volunteer Comprehensive Review Committee shall recommend denial of the background screening of a prospective or probationary employee or volunteer when it finds that approval will likely create a risk of harm to a child or vulnerable adult in any DHS Office or Division or the prospective or probationary employee or volunteer does not meet DHS high standards of conduct or promote public trust.

(6) Except as described below, a prospective employee or a volunteer whose background screening has been denied shall not be accepted as a volunteer or hired as an employee. A probationary employee whose background screening has been

denied shall have no direct access and employment shall be terminated.

(a) A Director may, in his/her sole discretion, appeal the decision of the DHS Employee and Volunteer Comprehensive Review Committee to the Executive Director.

R495-885-8. Division/Office Responsibilities.

(1) The Department shall notify the DHS Office of Licensing within five months of the termination of each employee for whom fingerprints have been retained under Section 62A-2-120 to enable the Office of Licensing to notify BCI and ensure the destruction of fingerprints.

(2) Each Division and Office shall ensure that an employee or volunteer who previously was screened based upon having no direct access shall, prior to having any direct access, be screened and approved in accordance with R495-885.

R495-885-9. Compliance.

The Department will set an implementation schedule to be in compliance with this rule no later than December 31, 2016.

KEY: background, employees, human services, screening
May 11, 2016 **62A-1-118**
62A-2-120

R512. Human Services, Child and Family Services.
R512-40. Recruitment, Home Studies, and Approval of Adoptive Families for Children in the Custody of Child and Family Services.
R512-40-1. Purpose and Authority.

(1) The purpose of this rule is to establish criteria for recruitment of adoptive families, standards for conducting adoptive home studies, and requirements for approval of adoptive homes.

(2) This rule is authorized by Sections 53-10-108, 62A-4a-102, 62A-4a-105, 62A-4a-205.6, 62A-4a-607, and 78B-6-128.

R512-40-2. Definitions.

(1) For the purpose of this rule the following definitions apply:

(a) "Adoptive parent" means a couple or individual who completes Child and Family Services training for prospective adoptive parents and is approved by Child and Family Services.

(b) "Cohabiting" means residing with another person and being involved in a sexual relationship.

(c) "Home study" means a pre-placement adoption evaluation defined in Section 78B-6-128 regarding the capacity of the adoptive parents, their family, and their resources available to meet the needs of a child in custody.

(d) "Involved in a sexual relationship" means any sexual activity and conduct between persons.

(e) "Permanency" means the establishment and maintenance of a legally permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present, and future.

(f) "Residing" means living in the same household on an uninterrupted basis for 30 days or more or on an intermittent basis.

R512-40-3. Recruitment of Adoptive Families for Children in the Custody of Child and Family Services.

(1) Child and Family Services seeks to recruit permanent adoptive families for children in state's custody whose primary permanency goal is adoption, or whose parents have voluntarily relinquished their parental rights or whose parental rights have been terminated by a court.

(2) Recruitment of an adoptive family for children in state's custody is accomplished by:

(a) Discussing with the adoptive applicant or relative caring for the child about adopting the child.

(b) Targeting efforts to identify family members and others known to the child to consider adoption.

(c) Coordinating with Child and Family Services resource family consultants throughout the state about potential adoptive families for a child.

(d) Website listing of a child for whom there is not an identified adoptive family within 30 days of the primary permanency goal of adoption or whose parents' parental rights are terminated.

(e) Requiring all licensed child placing adoption agencies in Utah to inform adoptive applicants that there are children in state's custody available for adoption in accordance with Section 62A-4a-607.

R512-40-4. Requirements for Persons Applying for Adoptive Placement of a Child in the Custody of Child and Family Services.

(1) Legally married couples and single adults, including relatives of a child and employees of Child and Family Services, may apply to adopt a child in state's custody based on their ability to provide a permanent family for the child. Adoptive applicants shall:

(a) Apply in the region where they live.

(b) Complete the adoption training program approved by Child and Family Services, with one exception:

(i) Training for relatives, as defined in Section 78A-6-307, who are adopting a child will be based on needs identified on a case-by-case basis.

(c) Be assessed and approved as an adoptive parent by Child and Family Services following completion of a home study pursuant to R512-40-5.

(d) Obtain a foster care license issued by the Department of Human Services, Office of Licensing, or meet the same standards required to be licensed in R501-12, or receive a written waiver from Child and Family Services for a specific standard.

(e) Receive a determination by Child and Family Services that no conflict of interest exists in the adoption process.

R512-40-5. Home Study Requirements for Adoption.

(1) A home study must be completed by the Department of Human Services, Office of Licensing, or by Child and Family Services, or by a licensed child placing adoption agency contracted with Child and Family Services.

(a) A prospective adoptive parent may not be approved for the adoptive placement of a child in state's custody unless:

(i) The prospective adoptive parent is legally married or single and not cohabiting.

(ii) The prospective adoptive parent and all adults residing in the home have completed criminal background checks, including a national fingerprint-based check that is approved according to criteria specified in Sections 53-10-108, 62A-2-120, 78A-6-308, and 78B-6-128, and Pub. L. 109-248.

(iii) A child abuse registry check is completed by Child and Family Services for the prospective adoptive parent and all adults residing in the home, including a check of child abuse registries in any states in which the prospective adoptive parent and all adults residing in the home have resided in the five years prior to application to adopt that is approved according to criteria specified in Sections 62A-2-120, 78A-6-308, and 78B-6-128, and Pub. L. 109-248.

(2) The home study should be consistent with the standards of the Child Welfare League of America (www.cwla.org).

(a) The following factors are critical in the success of adoptive placements and are required content in adoptive applicant interviews and home study documentation:

(i) Commitment to the legal adoption of the child as a permanent member of the family.

(ii) Stable marital relationship and/or commitment and stability in existing family relationships and/or the ability to sustain long-term relationships that would provide a base for an adoptive child.

(iii) Proper motivation and realistic expectations of a child who has experienced trauma and other effects of abuse and neglect.

(iv) Emotional openness, empathy, and flexibility.

(v) Strong social support system for both the parent and child.

(vi) Knowledge of resources to help raise a child.

(b) The following factors may significantly contribute to adoption disruption and the following are required content in adoptive applicant interviews and home study documentation:

(i) History of emotional or psychological problems or substance abuse.

(ii) Marital difficulties and incompatibilities that seriously compromise the ability to meet the needs of the child.

(iii) Serious problems in child rearing.

(iv) Unrealistic expectations of self and child.

(v) Impulse control disorders.

(vi) Disruptive and/or crisis filled lifestyle.

(vii) Criminal activity.

(c) The home study assessment and family evaluation will include information gathered from the following:

(i) Criminal background clearances for all adults in the home as described in subparagraph 1a(ii) above.

(ii) Child abuse registry clearances for all adults in the home as described in subparagraph 1a(iii) above.

(iii) Four written statements of reference, three of which are positive, regarding the applicant's stability and parenting capacity, with one exception:

(A) Two positive written statements of reference if the applicant is a relative of the child as defined in Section 78A-6-307.

(iv) Psycho-social information gathered from the prospective adoptive parent and family members.

(v) Home visits and interviews to assess the prospective adoptive parent in the following areas:

(A) Marriage and personal stability.

(B) Ability to manage stress.

(C) Parenting skills and emotional openness and flexibility to provide continuity of a caring relationship.

(D) Capacity to parent a child who has experienced trauma and who may have other special needs.

(E) How the children living at home will be affected.

(F) How supervision for the child will be arranged in accordance with the child's age and developmental ability at times when the prospective adoptive parent is not able to be in the home.

(vi) Health status verification regarding the prospective adoptive parent based on a doctor's examination made within six months prior to the date of application.

(vii) Financial status that verifies income sufficient to provide for a child's needs.

(viii) Home health and safety assessment.

(d) The evaluation of the family shall include their strengths and challenges.

(e) To preserve family connections for adopted children, home study requirements for relatives or friends known to the child as defined in Section 78A-6-307 that do not impact the health and safety of the child may be waived.

(f) Recommendations shall be made regarding the specific child intended to be adopted or the age and type of child who can best fit into the home to ensure the healthy development of the child.

R512-40-6. Follow-up Services.

(1) The identified committee in the region that reviews home studies will review each home study provided by the Department of Human Services, Office of Licensing, and any other detailed information regarding the adoptive parent. As a result of the review, the region committee will determine if the adoptive parent is approved to receive adoptive placements, if the adoptive parent is denied for adoptive placements, or if more information is needed from the adoptive parent.

(a) If the adoptive parent is approved for adoptive placements, the region committee (or region designee) will send a letter to the adoptive parent to let them know that they are approved for adoptive placements.

(b) When Child and Family Services determines through the region committee that there are concerns about making an adoptive placement with the adoptive applicant:

(i) The region committee or designee will provide their concerns in writing to designated region staff. The concerns will include any steps an adoptive applicant may take in order remedy concerns.

(ii) Two designated region staff members will meet with the adoptive applicant and review the concerns outlined by the region committee, including whether the concerns can be resolved.

(iii) The region designees will take clarifying information and/or steps that the adoptive applicant has taken to remedy concerns back to the region home study committee.

(iv) If the adoptive applicant has been able to remedy the concerns to the satisfaction of the region committee, the region committee will approve the adoptive parent to receive adoptive placements.

(v) If the adoptive applicant is unable or unwilling to remedy the concerns, a formal, written letter will be sent to the adoptive applicant explaining that Child and Family Services will not be making an adoptive placement with them.

(c) If an adoptive applicant is denied for adoptive placements, the family may request that the Child and Family Services region director or designee review the reasons for the denial. The Child and Family Services region director or designee is the only person who has the authority to reverse a denial.

(2) If a home study was conducted to evaluate a family for a specific child or a relative or friend known to the child as defined in Section 78A-6-307,the home study will be reviewed by the child's caseworker or designated adoption worker to determine if the adoptive parent is the best family to meet the child's needs.

(3) All adoptive home studies will require an updated amendment at least every 18 months to be considered current for child placement or adoption:

(a) A family licensed as a foster parent will require a home study update every 12 months to include background and child abuse registry clearances and to address any changes in the circumstances of the family.

(b) A family that is not licensed as a foster parent or has let their license lapse must have a home study update within 18 months of the original home study to include background and child abuse registry clearances and address any changes in the circumstances of the family.

(c) A home study that is older than two years will require new training requirements and a complete new home study.

(4) The home study document will be maintained in the Child and Family Services offices and will be destroyed according the retention schedule.

KEY: adoption

May 9, 2016 **53-10-108**

Notice of Continuation: March 5, 2012 **62A-4a-102**

62A-4a-105

62A-4a-205.6

62A-4a-607

78B-6-128

R512. Human Services, Child and Family Services.
R512-41. Qualifying Adoptive Families and Adoption Placement.
R512-41-1. Purpose and Authority.

(1) The purpose of this rule is to define the requirements used to qualify adoptive parent(s) and the criteria for adoption placement used by the Division of Child and Family Services (Child and Family Services).

(2) This rule is authorized by Section 62A-4a-102. This rule also incorporates by reference Public Law 110-351 (2008).

R512-41-2. Definitions.

(1) For the purpose of this rule the following definitions apply:

(a) "Adoptive parent(s)" means a couple or individual who completes Child and Family Services training and has a completed home study for prospective adoptive parent(s) and is approved by Child and Family Services.

(b) "Permanency" means the establishment and maintenance of a permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present, and future.

R512-41-3. Requirements for Adoptive Parent(s).

(1) Prospective adoptive parent(s) who apply to adopt a child in the custody of Child and Family Services, including a relative of a child or a Child and Family Services employee, must meet all of the requirements listed in Rule R512-40.

R512-41-4. Adoption Decision.

(1) Permanency decisions should be made in a timely manner, recognizing the child's developmental needs and sense of time. Child and Family Services shall make intensive efforts to place the child with the adoptive parent(s) within 30 days after the court determined a permanency goal of adoption for the child.

(2) When the child is not residing with the family that will adopt the child, Child and Family Services will reconsider any potential kinship caregivers or other adults known to the child.

(3) Concurrently, the Adoption Committee or committees should seek other resource families in all regions of the state to select adoptive parent(s) who could meet the child's needs.

(4) If adoptive parent(s) are not found for the child within 30 days of the primary permanency goal becoming adoption, the child must be registered with The Adoption Exchange to help recruit adoptive parents.

(5) Geographic boundaries alone should not present barriers or delays to the selection of adoptive parent(s).

(6) The Indian Child Welfare Act, 25 USC 1915 (January 3, 2007), takes precedent for an adoption of an Indian child who is a member of a federally recognized tribe or Alaskan native village.

(7) Placements will be made in accordance with the Interethnic Adoption Act, 42 USC 1996b (2010).

R512-41-5. Matching the Child and the Adoptive Parent(s).

(1) The selection of the adoptive parent(s) for a child or sibling group will be determined based on the best interest of the child.

(2) The decision must be based on a thorough assessment of the child's current and potential development, medical, emotional, and educational needs, as well as needs for family connections.

(3) The capacity of the prospective adoptive parent(s) to successfully meet the child's needs and to love and accept the child as a fully integrated member of the family must be considered.

(4) The child's preference may be considered, if the child has the capacity to express a preference.

(5) Sibling groups should not be separated.

(a) If siblings are not placed together and there are no safety concerns that preclude the siblings being together, Child and Family Services should reconsider a family for all the siblings to be adopted together.

(b) If the siblings are not able to be adopted together or if being taken from a current family would create undue trauma to the child, arrangements should be made to allow life-long contact to be pursued between the adoptive families of the separated siblings.

(6) Foster care parent(s) (or other caregiver with physical custody) of the child may be given preferential consideration for adoption if the child has substantial emotional ties with the foster parent(s)/caregiver and if removal of the child from the foster parent(s)/caregiver would be detrimental to the child's well-being.

(7) Child and Family Services shall provide detailed information about the child to the prospective adoptive parent(s), allowing sufficient time for the prospective adoptive parent(s) to make an informed decision regarding placement of the child. The information given to the prospective adoptive parent(s) must include detailed information available in writing that is important to raise the child. Child and Family Services and the prospective adoptive parent(s) will acknowledge receipt of the information by signing a Child and Family Services' information disclosure form. Child and Family Services shall respond to questions or concerns of the prospective adoptive parent(s). The prospective adoptive parent(s) shall have the opportunity to meet the child prior to permanent placement. Release of all documents is subject to the Government Records Access Management Act, Title 63G, Chapter 2.

(8) When the approved adoptive parent(s) agree to accept the placement of a child for adoption, the adoptive parent(s) and a representative from Child and Family Services shall sign an agreement for the intent to adopt a specific child on a form provided by Child and Family Services.

(9) When the adoptive parent(s) agree to accept the placement of a child who is not free for adoption, the parent(s) shall sign Child and Family Services' foster care agreement.

R512-41-6. Placement.

(1) Child and Family Services will make every effort to make a smooth and effective transition of the child to the prospective adoptive parent(s) with the cooperation of the foster family and others who have a supportive relationship with the child.

(2) All out-of-home requirements continue to be applicable until the adoption is finalized.

(3) The prospective adoptive parent(s) will have access to all relevant information in the case record to help them understand and accept the child and preserve the child's history.

(4) The prospective adoptive parent(s) shall be advised about adoption assistance available to meet the special needs of the child before and after the adoption is final, as well as of community services.

(5) Child and Family Services will develop a Child and Family Plan within 30 days of placement and supervise the adoptive placement, including frequent visits with the child and adoptive family for at least the first six months after placement.

(6) Child and Family Services' supervision will continue until the adoption is final.

R512-41-7. Adoption Disruption/Removal of a Child from Adoptive Parent(s) Prior to Finalization.

(1) Child and Family Services shall consider removal of a child before an adoption is finalized if the adoptive parent(s) request removal or if serious circumstances impair the child's security or development.

(2) Prior to removal, Child and Family Services shall respond to the adoptive parent(s)' concerns in a timely manner, counsel with the adoptive parent(s), and, if possible and appropriate, offer further treatment, including intensive in-home services or temporary removal of the child from the home for respite purposes.

(3) When removal is recommended, the Adoption Committee shall review the placement progress and present situation, and shall decide to either continue placement with further services or to remove the child from the home. The region director will review and approve the decision.

(4) If the Adoption Committee decides to remove the child, a Notice of Agency Action shall be sent to the adoptive parent(s), notifying them of their due process rights. The adoptive parent(s) shall be offered the same rights as those offered a foster family regarding removal of a child (Rule R512-31).

(5) Child and Family Services will reconsider any potential kinship caregivers if the child is disrupted or removed from an adoptive placement or a permanent placement has not been identified.

R512-41-8. Adoption Finalization and Post Adoption.

(1) Before an adoption is final, the Adoption Assistance Committee shall assess if the child qualifies for adoption assistance and, when appropriate, what level of monthly subsidy the child is eligible to receive (Rule R512-43).

(2) The prospective adoptive family shall be made aware of available post adoption resources.

R512-41-9. Adoption Committee.

(1) An Adoption Committee will be appointed in each Child and Family Services region and will consist of at least three members to include senior-level Child and Family Services staff and one or more members from an outside agency with expertise in adoption or foster care.

(2) The Adoption Committee is responsible for deciding adoptive parent(s) who can best meet the needs of a child when the child is not residing with the family that will adopt. The Adoption Committee is also responsible for recommending removal of the child from a placement when indicated.

(3) Anyone who has information regarding the child and the prospective adoptive parents under consideration may be invited by the Adoption Committee to present information but not to participate in the deliberations.

(4) Any member of the Adoption Committee who has a potential conflict of interest must recuse himself or herself from the proceeding.

(5) The Adoption Committee will reach its decision through consensus. If consensus cannot be reached, the Adoption Committee will submit their recommendation to the region director for a decision.

(6) Child and Family Services will send written notification of selection to the adoptive parent(s).

(7) A family or individual that is not selected for an adoption placement of a specific child shall have no right to appeal the decision, unless the parent(s) not selected for the adoptive placement is the child's current foster parent(s) and the foster parent(s) have completed all requirements. If the foster parent(s) are not selected for the adoptive placement, the foster parent(s) due process rights for removal of a child apply (Rule R512-31).

(8) The adoption committee will make and retain a written record of their proceedings. All proceedings are confidential.

R512-41-10. Adult Adoptee or Adoptive Parent(s) Request for Records.

(1) The adoption records of Child and Family Services shall be made available to the adoptive parent(s) or adult adoptee upon written request in accordance with the Government Records Access Management Act, Title 63G, Chapter 2. An adult adoptee may also register with the Utah Department of Health Mutual-Consent, Voluntary Adoption Registry, Section 78B-6-144 to attempt to contact biological family members.

R512-41-11. Information Regarding the Adoptive Parent(s).

(1) No identifying information regarding the adoptive parent(s) shall be released to birth families without the written consent of the adoptive parent(s).

KEY: child welfare, adoption

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Notice of Continuation January 28, 2014	**62A-4a-105**
	62A-4a-205.6

R512. Human Services, Child and Family Services.
R512-43. Adoption Assistance.
R512-43-1. Purpose and Authority.

(1) The purpose of the adoption assistance program is to aid an adoptive family to establish and maintain a permanent adoptive living arrangement for a child who qualifies for the program under state and federal law.

(2) The adoption assistance program is intended to provide a permanent family for a child in public foster care or who receives Supplemental Security Income (SSI) disability benefits by providing financial and medical assistance for the child's benefit and best interest to the family who adopts the child.

(3) Section 62A-4a-901, et seq. authorizes the state to provide adoption assistance and supplemental adoption assistance and Section 473, Social Security Act, authorizes federal adoption assistance. Section 473, Social Security Act (42 USC 673) as amended by Public Law 110-351 (October 7, 2008), 45 CFR 1356.40 (October 1, 2009), and 45 CFR 1356.41 (October 1, 2009) are incorporated by reference.

(4) This rule is authorized by Section 62A-4a-102.

R512-43-2. Definitions.

In addition to terms defined in Section 62A-4a-902, the following terms are defined for purposes of this rule:

(1) Initiation of adoption proceedings means (a) the date an Intent to Adopt a Specific Child is signed with Child and Family Services, or (b) the adoption finalization court date.

(2) Child in public foster care means a judicially removed child whose placement resulting in adoption was immediately preceded by protective, temporary, or legal custody with a State IV-E agency, or a child who was placed with a State IV-E agency through a Voluntary Placement Agreement, or the child of a minor parent in foster care.

(3) A child or youth who was taken into protective custody and, as a result of the protective episode, was placed with a relative who was given legal custody meets the definition of a child in public foster care.

(a) If the court orders Child and Family Services to continue to provide Protective Supervision Services for the family in making safety and permanency decisions for the child, including placement decisions and permanency goals, the child is eligible for adoption assistance if the child's permanency goal becomes adoption, if all other criteria in R512-43-3(1-4) are met.

(i) This may include a change in placement to another relative while the Protective Supervision Services continue to be court ordered.

(4) State IV-E agency means Child and Family Services or a public agency or tribal organization with whom Child and Family Services has an agreement in effect for foster care maintenance payments in accordance with Title IV-E, Section 42 USC 672.

(5) AFDC means the Aid to Families with Dependent Children program that was in effect on July 16, 1996.

(6) Child with a previous IV-E agreement means a child who was Title IV-E eligible in a previous adoption with a fully executed adoption assistance agreement originating in any state, and the previous adoption was legally dissolved or ended due to the death of both of the adoptive parents.

R512-43-3. General Requirements for Adoption Assistance.

(1) Qualification for adoption assistance is based upon the child meeting qualifying factors, not the adoptive family.

(2) A child qualifies for adoption assistance if all of the following are met:

(a) The state has determined that the child cannot or should not be returned home.

(b) The state can document that reasonable efforts were made to place the child for adoption without providing adoption assistance. An exception applies if the child has significant emotional ties with the adoptive family and it is not in the child's best interest to consider a different adoptive placement.

(c) The state determines the child meets the definition of a child with a special need in accordance with Section 62A-4a-901, et seq.

(i) A child under age five in public foster care meets the special need definition of "a child with a physical, emotional or mental disability" when the child is at risk to develop such a condition due to specific factors identified in the child's or birth parents' health and social histories.

(3) In determining eligibility for adoption assistance, there is no income eligibility requirement or means test for the adoptive parents.

(4) A child must be a U.S. citizen or qualified alien to receive adoption assistance.

(5) An application for adoption assistance is submitted to the regional adoption assistance committee on a form provided by Child and Family Services.

(6) Application for adoption assistance, approval, and completion of the adoption assistance agreement, including signatures of an adoptive parent and a representative from Child and Family Services, are to be completed prior to finalization of the adoption.

(7) Adoptive parents may request adoption assistance after an adoption is finalized by requesting a fair hearing through the Office of Administrative Hearings. Adoption assistance may only be granted after finalization when the conditions stated in R512-43-11-2(a) are met.

(8) Adoption assistance usually begins after finalization of an adoption. However, adoption assistance may be initiated at the time of placement if the child is legally free for adoption, the adoptive home is approved, adoption proceedings are initiated, an adoption assistance agreement is fully executed prior to placement, and foster care maintenance payments are not being provided for the child.

(9) An adoption assistance agreement shall be approved and have all required signatures before any payments may be made to an adoptive family or before state medical assistance may be initiated.

(10) A qualified child shall continue to be eligible to receive adoption assistance until a child reaches age 18 unless causes for termination apply as stated in R512-43-10. Assistance may be extended until a child reaches age 21 when the regional adoption assistance committee has determined that the child has a mental or physical disability that warrants continuing assistance.

(a) An extension of adoption assistance beyond age 18 is warranted if the child meets the criteria for services in the Department of Human Services, Division of Services for People with Disabilities.

(11) Child and Family Services is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family begins an adoptive placement of a qualified child in public foster care.

(12) The adoptive parents are responsible to notify Child and Family Services of any circumstances that may affect the child's eligibility for adoption assistance or eligibility for adoption assistance in a different amount.

R512-43-4. Reimbursement of Non-Recurring Adoption Expenses.

(1) A parent who adopts a child meeting all of the qualifying factors for adoption assistance listed in R512-43-3(2) may be reimbursed for non-recurring adoption expenses on behalf of the child.

(2) A parent may be reimbursed up to $2,000 per child for allowable non-recurring expenses directly related to the legal adoption of a child with a special need. Reimbursement shall be

limited to costs approved by the regional adoption assistance committee.

(3) Expenses may include reasonable and necessary adoption fees, court costs, adoption-related attorney fees, pre-placement adoptive evaluation, health and psychological examinations of adoptive parents, post-placement adoptive evaluation prior to adoption, and transportation and reasonable costs of lodging and food for the child and/or adoptive parents during the placement or adoption process.

(4) Adoptive parents are responsible to provide necessary receipts for reimbursement.

(5) Only costs that are incurred in accordance with State and Federal law and that have not been reimbursed from other sources or funds may be included.

(6) Non-recurring adoption expenses are reimbursable through Title IV-E Adoption Assistance. The child does not have to be determined Title IV-E eligible for the parents to receive this reimbursement.

R512-43-5. Monthly Subsidy.

(1) Qualifying for a Monthly Subsidy.

A child qualifies for a monthly subsidy when the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI, or the child had a previous IV-E agreement or Utah state adoption assistance agreement.

(c) The child's eligibility for SSI disability benefits is established no later than the time adoption proceedings are initiated.

(2) Guiding Principles for Monthly Subsidies.

(a) The amount of monthly subsidy to be paid for a child is based on the child's present and long-term care and treatment needs and available resources, including the family's ability to meet the needs of the child. A combination of the parents' resources and subsidy should cover the ordinary and special needs expenses of the child projected over an extended period of time.

(b) The amount of the monthly subsidy may not exceed the payment that would be made if the child was placed in a foster family home at the point in time when the agreement is being initiated or revised.

(c) The amount of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet those needs changes. The family or the Child and Family Services worker may initiate a change in the amount of subsidy at any time when needs or resources change.

(d) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and the Child and Family Services worker. Prior to subsidy negotiation, the adoptive parents must have reviewed the child's case file information and discussed in depth with the Child and Family Services worker what will be needed after the child leaves state's custody.

(e) The amount of the monthly subsidy is subject to the approval of the regional adoption assistance committee. If the requested amount is not granted, the adoptive parent has a right to appeal as stated in R512-43-11.

(3) Process for Determining Monthly Subsidy Amount.

(a) Utilizing the level of need criteria specified in R512-43-5(4), the Child and Family Services worker and adoptive family identify the child's level of need.

(b) The Child and Family Services worker and adoptive family identify the applicable monthly subsidy payment range, according to the child's specified level of need, as specified in R512-43-5(5).

(c) The Child and Family Services worker and adoptive family negotiate the amount of monthly subsidy to be requested from the regional adoption assistance committee. The requested monthly subsidy amount may not exceed the maximum amount for the specific level of need identified for the child nor the maximum amount that the child would receive if placed in a foster family home.

(d) The identified need level for the child and requested amount of monthly subsidy is presented to the regional adoption assistance committee for approval. If the requested amount is not approved or is reduced by the committee, Child and Family Services must send a written notice to the adoptive parents within 30 days informing them of the process to request a fair hearing.

(4) Determining Child's Level of Need.

(a) The level of need is determined by considering the child's age, history, physical, mental, emotional, and social functioning and needs, and any other relevant factors. Frequency of occurrence, duration, severity, and number of needs or problem areas are also considered.

(b) The presence of a particular issue listed within a designated level does not mandate that the child be categorized at that level. The child's needs, taken as a whole, determine the level selected for the child.

(c) Level of need is classified into three categories.

(i) Level One applies to a child with a minimal number and severity of needs. It is expected that most of these issues will improve with time, and significant improvement may be anticipated over the course of the adoption. For children ages five and under issues may include, but are not limited to: feeding problems, aggressive or self destructive behavior, victimization from sexual abuse, victimization from physical abuse; or no more than one developmental delay in fine motor, gross motor, cognitive or social/emotional domains. For children ages 6-18, issues may include but are not limited to: social conflict, physical aggression, minor sexual reactivity, need for education resource classes or tutoring, some minor medical problems requiring ongoing monitoring, or mental health issues requiring time limited counseling.

(ii) Level Two applies to a child with a moderate number and severity of needs. It is expected that a number of these issues are long-term in nature and the adoptive family and child will be working with them over the course of the adoption, and some may intensify or worsen if not managed carefully. Outside provider support will probably continue to be needed during the course of the adoption. For children ages five and under, issues may include, but are not limited to: developmental delays in two or more areas of fine motor, gross motor, cognitive or social/emotional domains; diagnosis of failure to thrive; moderate genetic disease or physical disability condition; or physical aggression expressed several times a week, including superficial injury to self or others. For children ages 6-18, issues may include, but are not limited to: daily social conflict or serious withdrawn behavior; moderate risk of harm to self or others due to physically aggressive behavior; emotional or psychological issues with a mental health diagnosis requiring ongoing counseling sessions over an extended period of time; moderate sexual reactivity or perpetration; chronic patterns of being destructive to items or property; cruelty to animals; mild cognitive disability, autism, or fetal alcohol spectrum disorder with ongoing need for special education services; and physical disabilities requiring ongoing attendant care or other caretaker support.

(iii) Level Three applies to a child with a significant number or high severity of needs. It is expected that these issues will not moderate and may become more severe over time. The child's level of need may at some time require personal attendant care or specialized care outside of the home, when prescribed by a professional. For children ages five and under issues may include, but are not limited to: severe life threatening medical issues; moderate or severe cognitive disability, autism, or fetal

alcohol spectrum disorder; serious developmental delays in three or more areas of fine or gross motor, cognitive or social/emotional domains; anticipated need for ongoing support for activities of daily living, such as feeding, dressing and self care; or high levels of threat for harm to self or others due to aggressive behaviors. For children ages 6-18 issues may include, but are not limited to: moderate or severe retardation or autism; life threatening medical issues; severe physical disabilities not expected to improve over time; predatory sexual perpetration; high risk of serious injury to self or others due to aggressive behavior; serious attempts or threats of suicide; severely inhibiting diagnosed mental health disorders diagnosed within the past year that limit normal social and emotional development, such as a need for ongoing self contained or special education services.

(d) The regional adoption assistance committee must approve the level of need identified for the child.

(e) A child's need level may be increased in severity by one level if the adoption assistance committee determines that the child's permanency may be compromised due to financial barriers to the child's adoption and if at least one of the following circumstances apply:

(i) The child has been in state custody for longer than 24 months.

(ii) The child is nine years of age or older.

(iii) The child is part of a sibling group of three or more children being placed together for the purposes of adoption.

(5) Identifying Amount for Monthly Subsidy Based Upon the Child's Level of Need.

(a) Each level of need corresponds to a dollar range in the amount of monthly subsidy that may be paid for a child, with the specific amount based upon the individual child's needs and the family's ability to meet those needs.

(b) The monthly subsidy amount for an individual child may not exceed the maximum amount for the payment range applicable to the child's level of need.

(c) A family may choose to defer receipt of a monthly subsidy for which a child qualifies, with the option to initiate a monthly subsidy at a later date.

(d) A family may choose to receive a lesser amount than would be allowable for the level of need at a given point in time.

(e) Monthly subsidy payments for a child's needs categorized as Level One range from zero to 40 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(f) A family may choose to receive a lesser amount than would be allowable for the child's level of need at a given point in time.

(g) Monthly subsidy payments for a child's needs categorized as Level Two range from 20 to 70 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(h) Monthly subsidy payments for a child's needs categorized as Level Three range from 50 to 100 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(i) For extraordinary, infrequent, or uncommon documented needs that cannot be covered by a monthly subsidy or state medical assistance, refer to supplemental adoption assistance in R512-43-7.

(6) Funding Sources and Eligibility for Monthly Subsidy.

(a) The two funding sources for the monthly subsidy are Title IV-E Adoption Assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(b) Title IV-E Adoption Assistance shall be considered first for the monthly subsidy. To receive Title IV-E Adoption Assistance, a child with special needs shall meet at least one of the following Federal requirements:

(i) A child is determined eligible for SSI by the Social Security Administration prior to the initiation of adoption proceedings.

(ii) A child in foster care who meets the age criteria defined by the federal fiscal year qualifies for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(iii) A child in foster care who has been in foster care for any previous 60 consecutive months may qualify for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(iv) A child in foster care who is a sibling of another child in foster care who qualifies under the enhanced age criteria and is being adopted into the same family may qualify for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(v) The removal home for the child in public foster care received, or would have been eligible to receive, AFDC prior to removal, and the child was removed from the home as a result of a judicial determination that remaining in the home would be contrary to the child's welfare.

(vi) The child was voluntarily placed for foster care with the state and:

(A) Was or would have been AFDC eligible at the time of removal if application had been made,

(B) The child lived with a specified relative within the six months prior to the voluntary placement, and

(C) Title IV-E foster care maintenance payments were made on behalf of the child.

(vii) The child's needs were met through foster care maintenance payments made to and for the child's minor parents as provided by Subsection 475(4)(B) of the Social Security Act.

(viii) The child had a previous IV-E adoption assistance agreement.

(c) State adoption assistance funds may be used for the monthly subsidy if the qualified child is not eligible for Title IV-E Adoption Assistance.

(7) Use of the monthly subsidy. The monthly subsidy may be used according to the parents' discretion. Some examples of the uses of the monthly subsidy payment are medical, dental, or mental health services not paid for by the state medical assistance or family insurance, special equipment for physically or mentally challenged children, respite care, child care, therapeutic equipment, minor renovation of the home to meet special needs of the child, damage and repairs, speech therapy, tutoring, specialized preschool based on needs of the child, private school, exceptional basic needs such as special food, clothing, and/or shelter, visitations with biological relatives, cultural and heritage activities and information.

R512-43-6. State Medical Assistance.

(1) A child qualifies for state medical assistance as a component of adoption assistance when all of the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI disability benefits, or the child had a previous IV-E adoption assistance agreement or Utah state adoption assistance agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(c) The child meets state medical assistance citizenship requirements.

(2) A qualified child may receive state medical assistance through an adoption assistance agreement without also receiving a monthly subsidy payment.

(3) The adoptive family must meet all Medicaid requirements, including application, citizenship verification, and annual review requirements in order for Medicaid to be initiated and continue throughout the period of the adoption assistance agreement.

R512-43-7. Supplemental Adoption Assistance.

(1) A child meeting all qualifying criteria for a monthly subsidy and for whom an adoption assistance agreement for a monthly subsidy or state medical assistance is in effect may qualify for supplemental adoption assistance.

(2) Supplemental adoption assistance may only be used for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

(3) Supplemental adoption assistance is not an entitlement, and will be granted only when justified by unique needs of the child and when all other resources for which a child is eligible have been exhausted.

(4) Supplemental adoption assistance requests up to $3,000 will be considered and are subject to the approval of the regional adoption assistance committee.

(5) Supplemental adoption assistance requests from $3,001 to $10,000 shall be considered by the appropriate regional advisory committee established under Subsection 62A-4a-905(2).

(6) Supplemental adoption assistance requests exceeding $10,001 shall be considered by a state level advisory committee with the same membership composition as the regional advisory committees.

(7) Recommendations from the advisory committee are subject to the approval of the Region Director or designee.

(8) Any obligation made or expense incurred by a family prior to approval shall not be reimbursed with supplemental adoption assistance funds unless approval is granted by the Region Director.

(9) A request for an amendment or extension of an existing supplemental adoption assistance agreement will be reviewed by the same committee that reviewed the initial request. If the total amount of multiple requests in a year is $3,000 to $10,000, the request shall be submitted to the appropriate regional advisory committee. If the request exceeds $10,000, the request shall be submitted to the state level advisory committee.

(10) Supplemental adoption assistance is subject to the availability of state funds appropriated for adoption assistance.

R512-43-8. Regional Adoption Assistance Committee.

(1) Each region shall establish at least one regional adoption assistance committee.

(2) The regional adoption assistance committee shall be comprised of at least five members, and a minimum of three members must be present for making decisions regarding adoption assistance. Decisions shall be made by consensus.

(3) Members of the committee may include the following:

(a) Chairperson;

(b) Clinical consultant or casework supervisor;

(c) Regional budget officer or fiscal representative;

(d) Allied agency representative from agencies such as a community mental health center, private adoption agency, or other agencies within the department;

(e) Regional administrator or other staff with relevant responsibilities;

(f) Adoptive or foster parent.

(4) Responsibilities of the regional adoption assistance committee include:

(a) Verification that a child qualifies for adoption assistance,

(b) Approval for reimbursement of allowable, reasonable non-recurring costs,

(c) Approval of level of need and amount of monthly subsidy for initial requests, changes, amendments, and renewals,

(d) Approval of supplemental adoption assistance up to $3,000,

(e) Extension of adoption assistance up to age 21 for a qualifying child,

(f) Renewal of adoption assistance, and

(g) Documentation of committee decisions.

R512-43-9. Adoption Assistance Review.

(1) The adoption assistance agreement for a monthly subsidy or state medical assistance shall continue until the month of the adopted child's 18th birthday.

(2) An agreement for supplemental adoption assistance exceeding $3,000 shall be reviewed according to a time frame determined on a case by case basis by the appropriate regional advisory committee.

R512-43-10. Termination of Adoption Assistance.

(1) An adoption assistance agreement for a monthly subsidy or state medical assistance shall be terminated if any of the following occur:

(a) The terms of the adoption assistance agreement are concluded.

(b) The adoptive parents request termination.

(c) The month following the child's 18th birthday, unless approval has been given by the adoption assistance committee to continue until the month following the child's 21st birthday due to mental or physical disability.

(d) The child dies.

(e) The adoptive parents die.

(f) The adoptive parents' legal responsibility for the child ceases.

(g) The state determines that the child is no longer receiving financial support from the adoptive parents.

(h) The child enters the military.

(i) The child marries.

(2) Termination of state medical assistance is subject to the policies of the Division of Health Care Financing.

(3) Supplemental adoption assistance shall terminate when an adoption assistance agreement for a monthly subsidy or state medical assistance is terminated, the terms of the agreement are concluded, the authorizing committee determines that the services funded with supplemental funds are no longer effective or appropriate based upon an independent review by a qualified provider, or if lack of availability of state funding prevents continuation. Written notice as described in R512-43-10(4) shall be provided at least 30 days before funding is discontinued due to lack of availability of state funding appropriated for adoption assistance or due to determination that services are no longer effective or appropriate.

R512-43-11. Fair Hearings.

(1) Fair Hearing Request.

A written request for a fair hearing may be submitted within 10 working days after receiving a Department of Human Services/Child and Family Services decision to the Department of Human Services if:

(a) The adoption assistance application is denied;

(b) The adoption assistance application is not acted upon with reasonable promptness;

(c) Adoption assistance or supplemental adoption assistance is reduced, terminated, or changed without the concurrence of the adoptive parents;

(d) The amount of adoption assistance or supplemental adoption assistance approved was less than the amount requested by adoptive parents;

(e) Adoption assistance was not requested prior to finalization of the adoption and one of the criteria in R512-43-11(2)(a) applies.

(2) Post Finalization Request Fair Hearing.

(a) The fair hearing officer may approve appropriate state or federal adoption assistance for post finalization requests if one of the following is met:

(i) Relevant facts regarding the child, the biological family, or child's background were known but not presented to adoptive parents prior to finalization.

(ii) A denial of assistance was based upon a means test of the adoptive family.

(iii) An erroneous state determination was utilized to find a child ineligible for assistance.

(iv) The state or adoption agency failed to advise adoptive parents of the availability of assistance.

(b) The adoptive parents bear the burden of documenting that the child meets the definition of a child with a special need and that one of the criteria in R512-43-11(2)(a) applies. The state may provide corroborating facts to the family or the fair hearing officer.

R512-43-12. Interstate Adoption Assistance.

(1) Child and Family Services is responsible to determine if a child in Utah public foster care qualifies for adoption assistance when the child is placed in an adoptive home in another state. If the child qualifies, Child and Family Services provides adoption assistance regardless of the state of residence of the adoptive family and child.

(2) If a child with a previous IV-E adoption assistance agreement enters public foster care because the adoption was dissolved or ended due to the result of the death of the parents, the state in which the child is taken into custody in public foster care is responsible to provide adoption assistance in a subsequent adoption.

(3) If a child with a previous IV-E adoption assistance agreement does not enter public foster care when the adoption dissolved or ended due to the death of both parents, the new adoptive parent is responsible to apply for adoption assistance in the new adoptive parent's state of residence.

(4) A parent desiring to adopt an out-of-state child who is not in public foster care but is receiving SSI disability benefits shall apply for adoption assistance in the parent's state of residence.

(5) An adoption assistance agreement remains in effect regardless of the state of residence of the adoptive parents as long as the child continues to qualify for adoption assistance.

(6) If a needed service specified in the agreement is not funded by the new state of residence, the state making the original adoption assistance payment remains financially responsible for paying for the specific service.

KEY: adoption, child welfare, foster care
May 9, 2016 62A-4a-102
Notice of Continuation January 25, 2016 62A-4a-106
62A-4a-901 through 62-4a-907

R512. Human Services, Child and Family Services.
R512-44. Choose Life Adoption Support Restricted Account.
R512-44-1. Purpose and Authority.

(1) The purpose of this rule is to specify the requirements for carrying out the purposes of the Choose Life Adoption Support Restricted Account as outlined in Section 62A-4a-608, with the funding specified in Section 41-1a-418.

(2) This rule is authorized by Section 62A-4a-102.

R512-44-2. Definitions.

(1) For the purposes of this Rule:

(a) "Administrator" means the employee of Child and Family Services appointed by the Director to administer the Choose Life Adoption Support Restricted Account.

(b) "Child and Family Services" means the Division of Child and Family Services.

(c) "Director" means the Director of Child and Family Services.

(d) "RFP" means Request for Proposal.

R512-44-3. Scope.

(1) Funds from the Choose Life Adoption Support Restricted Account shall be used for charitable organizations that support, promote, and provide education about adoption. This may occur by producing and distributing educational and promotional materials on adoption, conducting educational courses on adoption, and providing other programs that support adoption as specified in Section 62A-4a-608.

R512-44-4. Responsibilities of the Director.

(1) In addition to the responsibilities defined in Section 62A-4a-608, the Director shall:

(a) Designate a staff member to serve as the Administrator of the Choose Life Adoption Support Restricted Account.

(2) Approve policies of the Choose Life Adoption Support Restricted Account.

R512-44-5. Funding Limitations and Requirements.

(1) Child and Family Services shall distribute the funds in the Choose Life Adoption Support Restricted Account to one or more charitable organizations that:

(a) Qualify as being tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(b) As part of their primary mission, include the support, promotion, and education about adoption of children; and

(c) Are licensed or registered to do business within the state in accordance with Utah state law.

(2) Funding for individual projects shall be based on yearly revenues available in the restricted account. If unobligated account revenues for a given year are less than $50,000, Child and Family Services may forego the RFP process for that year.

(3) Each program or project funded through the Choose Life Adoption Support Restricted Account shall provide a dollar-for-dollar match from private, non-government sources.

(a) In-kind contributions may be used as part of the match requirement. No more than 50 percent of the match requirement may be in-kind.

(b) Items that may be used as in-kind match are contributed services of support personnel, office space, furniture and equipment, utility costs, donated printing, vehicles, and 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.

(4) Of the total monies available for allocation in the Choose Life Adoption Support Restricted Account, awards shall be granted according to the allocation plan approved by the Director.

R512-44-6. Proposal Requirements.

(1) A RFP shall be developed by the Administrator based upon the approved allocation plan and adoption support priorities, and in accordance with State Purchasing Guidelines. The RFP shall specify the purposes and eligibility requirements for projects or programs to be funded through the Choose Life Adoption Support Restricted Account. The proposal requirements may vary from year to year.

(2) The RFP shall be disseminated through the online State Purchasing Bid Program. Project or program proposals shall be submitted as specified in the RFP.

R512-44-7. Procedures in Selecting Programs or Projects to be Supported by the Choose Life Adoption Support Restricted Account.

(1) Proposals received by Child and Family Services in response to the RFP shall be reviewed according to the criteria specified in the RFP, consistent with Section 62A-4a-608.

(2) The Administrator or Child and Family Services contract specialists shall negotiate contracts with successful offerors, based on State Purchasing Guidelines.

R512-44-8. Research.

(1) Choose Life Adoption Support Restricted Account funds may be used for research programs consistent with Section 62A-4a-608 at funding levels deemed appropriate. Basic or applied research programs or projects that provide empirical data that help support adoption of children or inform adoption education may be funded.

R512-44-9. Evaluation.

(1) Each program or project funded through the Choose Life Adoption Support Restricted Account shall be evaluated by Child and Family Services at least once each year to determine if the purposes and goals of the project have been met.

KEY: adoption, Choose Life Adoption Support

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Notice of Continuation April 14, 2016	**41-1a-419**
	41-1a-422
	62A-4a-102
	62A-4a-311
	62A-4a-608
	63J-1-504
	63J-1-602.4

R527. Human Services, Recovery Services.
R527-34. Non-IV-A Services.
R527-34-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-11-107.

2. The purpose of this rule is to outline the services that the Office of Recovery Services/Child Support Services (ORS/CSS) will provide to all Non-IV-A Recipients of child support services.

R527-34-2. Non-IV-A Services.

1. ORS/CSS will provide the following services to recipients of child support services:

a. Attempt to locate the obligor;

b. Attempt to collect the current child support amount;

c. Attempt to collect past-due child support which is owed on behalf of a child, regardless of whether the child is a minor;

d. Attempt to enforce court-ordered spousal support if the minor child of the parties resides with the obligee and ORS/CSS is enforcing the child support order; ORS/CSS will only continue to collect spousal support after the child has emancipated if:

i. income withholding is already in effect; and,

ii. the child(ren) still resides with the obligee;

e. Attempt to collect child care expenses if the past-due amount has been reduced to a sum-certain judgment;

f. Attempt to collect ongoing child care expenses if all of the following criteria are met:

i. the obligor or the obligee made a specific request for ORS/CSS to collect ongoing child care;

ii. the child care obligation is included as a specific monthly dollar amount in a court order along with a child support obligation; and,

iii. neither parent is disputing the monthly child care amount;

g. Attempt to collect medical support if the amount is specified as a monthly amount due in the order or has been reduced to a sum-certain judgment;

h. Attempt to enforce medical insurance if either parent has been ordered to maintain insurance;

i. Attempt to establish paternity;

j. Review the support order for possible adjustment of the support amount, in compliance with R527-231.

2. ORS/CSS adopts the federal regulations as published in 45 CFR 302.33 (2010) which are incorporated by reference. 45 CFR 302.33 provides options which ORS/CSS may elect to implement. ORS/CSS elected to implement the following options:

a. ORS/CSS has elected to charge no application fee to applicants for child support enforcement services.

b. ORS/CSS has elected to recover costs from the individual receiving child support enforcement services. The costs which will be recovered are listed in R527-35-2.

c. ORS/CSS has elected not to recover from the non-custodial parent the costs listed in R527-35-2 which are paid by the individual receiving child support services.

KEY: child support
March 27, 2012 62A-11-107
Notice of Continuation November 16, 2015 45 CFR 302.33

R527. Human Services, Recovery Services.
R527-800. Acquisition of Real Property, and Medical Support Cooperation Requirements.
R527-800-1. Purpose and Authority.

A. Purpose

Enforcement actions may be initiated against real property to satisfy financial obligations when other methods have failed or are unavailable in a case.

B. Authority

Section 62A-11-104 charges the Office of Recovery Services with the duty to collect money due the department. Enforcement actions shall be initiated in accordance with the specific statutory authority provided under specific state statute and in accordance with the Criminal Code, Utah Rules of Civil Procedure Uniform Probate Code and the Judicial Code Utah Code Annotated.

R527-800-2. Acquisition and Disposition of Real Property.

A. The department may acquire property in payment for an obligation by:

1. voluntary conveyance;
2. conveyance by heirs; or
3. execution.

B. Acquisition of real property is an action of last resort.

C. Voluntary conveyance shall be by Warranty or Quit Claim Deed in favor of the department.

D. Property owned by the state is tax exempt in accordance with Section 59-2-1101.

R527-800-3. Sale of Real Property.

A. Certified appraisals and preliminary title reports may be requested.

B. The department will not provide title insurance. The State will clear all back taxes and encumbrances from the property at the time of closing.

R527-800-4. Liens, Cost of Sale.

The costs of sale which are allowed are those provided in 62A-11-111.

R527-800-5. Sanction, Medical Support, TPL, Paternity.

In accordance with 42 CFR 433.147-148 a recipient of medical assistance must cooperate with the state agency in providing information regarding Third Party Liability, establishment of paternity for children to establish medical support liability, and in utilizing all available third party resources to offset medicaid expenditures. Failure to cooperate will result in the recipient being removed from the medical assistance case.

KEY: enforcement, civil procedures, Medicaid, welfare fraud

September 18, 2001	**59-2-1101**
Notice of Continuation November 16, 2015	**62A-11-111**
	62A-11-104
	42 CFR 433.147
	42 CFR 433.148

R590. Insurance, Administration.
R590-262. Health Data Authority Health Insurance Claims Reporting.
R590-262-1. Authority.

This rule is promulgated pursuant to Subsection 31A-22-614.5(3)(a) to coordinate with the provision of Subsection 26-1-37(2)(b) and Utah Department of Health rules R428-1 and R428-15.

R590-262-2. Purpose and Scope.

(1) This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.

(2) This rule allows the data to be shared with the state's designated secure health information master index person index, Clinical Health Information Exchange (cHIE), to be used:

(a) in compliance with data security standards established by:

(i) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936: and

(ii) the electronic commerce agreements established in a business associate agreement;

(b) for the purpose of coordination of health benefit plans; and

(c) for the enrollment data elements identified in Utah Administrative Rule R428-15, Health Data Authority Health Insurance Claims Reporting.

(3)(a) This rule applies to an insurer offering a health benefit plan.

(b) This rule does not apply to:

(i) an insurer that covers fewer than 2500 individual Utah residents:

(ii) a long-term care insurance policy; or

(iii) an income replacement policy.

(c) This rule does not require a person to provide information concerning a self-funded employee welfare benefit plan as defined in 29 U.S.C. Section 1002(1).

R590-262-3. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Claim" means a request or demand on an insurer for payment of a benefit.

(2) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires an insurer to report.

(3) "Insurer" means:

(a) a person engaged in the business of offering a health benefit plan, including a business under an administrative services organization or administrative services contract arrangement;

(b) a third party administrator that collects premiums or settles claims for health care insurance policies;

(c) a governmental plan as defined in Section 414(d), Internal Revenue Code;

(d) a non-electing church plan as described in Section 410 (d), Internal Revenue Code; or

(e) a licensed professional employer organization that is acting as an administrator of a health care insurance policy.

(5) "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

(6) "Technical specifications" means the technical specifications document published by the Health Data Committee describing the variables and formats of the data that are to be submitted as well as submission directions and guidelines.

R590-262-4. Reporting Requirements.

(1) Each insurer shall submit enrollment, medical claims, and pharmacy data described in R428-15-5 and R590-262-5, where Utah is the patient's primary residence, for services provided in or out of the state of Utah.

(2) Each insurer shall permit the Utah Department of Health to redisclose the enrollment and eligibility information with the state designated entity for the purpose of coordination of benefits.

(3) Each insurer shall submit monthly health care claims data. Each monthly submission is due no later than the last day of the following month.

R590-262-5. Reporting Process.

(1) Submission procedures and guidelines are described in detail in the technical specifications published by the Health Data Committee. The health care claims data shall be either X12 format, or flat text files formatted according to the technical specifications.

(2) All medical claims shall be submitted to the Office through the Utah Health Information Network (UHIN) in X12 format.

(3) All enrollment and pharmacy data files shall be submitted to the Office in flat text files using either UHIN or FTP Secure.

R590-262-6. Required Data Elements.

(1) The enrollment, medical claims, and pharmacy data elements are described in detail in the technical specifications published by the Health Data Committee. Each insurer shall submit data for all fields contained in the submission specifications if the data are available to the insurer.

(a) Each insurer must submit enrollment files as a flat file.

(b) Each insurer must submit medical claims as X12 messages as modified by this rule. All X12 format messages must contain all the necessary segments for processing through UHIN. This includes ISA/IEA segments, GS and GE segments, Segment Qualifier codes, etc., as specified in the X12 implementation guides. If a segment or qualifier is required for X12 format, it is required for all submissions under this rule. If a segment or qualifier is not required for X12 format, but is required by this rule, it must be submitted as required by this rule. Submitted files must be in the ASC X12 4010A1 x098 for a Professional Claim and in the ASC X12 4010A1 x096 for an Institutional Claim.

(c) Each insurer must submit pharmacy claims as a flat file.

(2) Each insurer must submit the enrollment files, professional medical claims, institutional medical claims, and pharmacy claims data elements as required in R428-15.

R590-262-7. Third-party Contractors.

The Office may contract with a third party to collect and process the health care claims data and will prohibit it from using the data in any way but those specifically designated in the scope of work.

R590-262-8. Insurer Registration.

Each insurer shall register with the Office by completing the registration online at http://health.utah.gov/hda/apd/ no later than 30 days after becoming subject to this rule and annually thereafter by no later than September 1.

R590-262-9. Testing of Files.

Insurers that become subject to this rule shall submit to the Office a dataset for determining compliance with the standards for data submission no later than 90 days after the first date of becoming subject to the rule.

R590-262-10. Rejection of Files.

The Office or its designee may reject and return any data submission that fails to conform to the submission requirements. Paramount among submission requirements are: First Name, Last Name, Member ID, Relationship to Subscriber, Date of Birth, Address, City, State, Zip Code, Sex, which are key data fields that the insurer must submit for each enrolled member and claim. An insurer whose submission is rejected shall resubmit the data in the appropriate, corrected format to the Office, or its designee within ten state business days of notice that the data does not meet the submission requirements.

R590-262-11. Replacement of Data Files.

An insurer may replace a complete dataset submission if no more than one year has passed since the end of the month in which the file was submitted. However, the Office may allow a later submission if the insurer can establish exceptional circumstances for the replacement.

R590-262-12. Provider Notification.

(1) The following notification must be provided to a person that receives shared data, "This shared data is provided for informational purposes only. Contact the insurer for current, specific eligibility, or benefits coverage determination."

(2) The notification in this section shall be provided in coordination with provider participation in the master index patient index and the cHIE programs.

R590-262-13. Limitation of Liability.

A person furnishing information of the kind described in this rule is immune from liability and civil action if the information is furnished to or received from:

(a) the commissioner of the Insurance Department, the executive director of the Department of Health, or their employees or representatives;

(b) federal, state, or local law enforcement or regulatory officials or their employees or representatives; or

(c) the insurer that issued the policy connected with the data set.

R590-262-14. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided in Section 31A-2-308.

R590-262-15. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R590-262-16. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: health insurance claims reporting
May 23, 2016 31A-22-614.5(3)(a)

R590. Insurance, Administration.
R590-266. Utah Essential Health Benefits Package.
R590-266-1. Authority.

This rule is promulgated pursuant to Subsection 31A-30-116(3)(b) wherein the commissioner is directed to adopt a rule for purposes of designating the essential health benefits for Utah.

R590-266-2. Purpose and Scope.

(1) The purpose of this rule is to designate an essential health benefits package in Utah as required by Section 1302 of the Patient Protection and Affordable Care Act of 2010, the Health Care Education Reconciliation Act of 2010, and related federal regulations and guidance (PPACA).

(2) This rule applies to all non-grandfathered individual and small employer health benefit plans issued or renewed on or after January 1, 2014.

R590-266-3. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purpose of this rule:

(1) "Essential health benefits" means the following health care service categories that must be included in non-grandfathered individual and small employer health benefit plans beginning January 1, 2014:

(a) ambulatory patient services;

(b) emergency services;

(c) hospitalization;

(d) maternity and newborn care;

(e) mental health and substance use disorder services, including behavioral health treatment;

(f) prescription drugs;

(g) rehabilitative and habilitative services and devices;

(h) laboratory services;

(i) preventive and wellness services and chronic disease management; and

(j) pediatric services, including oral and vision care.

(2) "Grandfathered health plan" means an individual or small employer health benefit plan that:

(a) was in existence when the PPACA was enacted on March 23, 2010;

(b) has not had any significant changes that reduce benefits or increase costs to consumer including:

(i) a significant cut or reduction in benefits, such as excluding coverage for people with diabetes;

(ii) an increase in co-pays by more than $5, adjusted annually for medical inflation, or a percentage equal to medical inflation plus 15%;

(iii) the employer reduces contributions by more than five percentage points; or

(iv) reducing annual dollar limits, or adding a new limit; and

(c) the insured has received notification from the carrier that their health benefit plan is a grandfathered plan.

(3) "Habilitative" means health care services that help a person keep, learn, or improve skills and functioning for daily living. Habilitative services may include physical therapy, occupational therapy, speech-language pathology, and other services.

(4) "Non-Grandfathered health plan" means an individual or small employer health benefit plan:

(a) that is issued after the PPACA was enacted on March 23, 2010; or

(b) a grandfathered health plan that has made significant changes that reduce benefits or increase costs to consumers that has caused the plan to lose the grandfathered status as provided in (2)(b).

(5) "Rehabilitative" means the treatment of disease, injury, developmental delay, or other cause, by physical agents and methods to assist in the rehabilitation of normal physical bodily function, that is goal-oriented and where the person has potential for functional improvement and ability to progress.

(6) "Utah Essential Health Benefits Package" means the benefits designated in this rule by the commissioner as essential health benefits in non-grandfathered plans for the purposes of the PPACA in Utah.

R590-266-4. Utah Essential Health Benefits.

(1)(a) The commissioner hereby designates the PEHP Utah Basic Plus plan as the Utah Essential Health Benefits Package for purposes of the PPACA in Utah.

(b) The PEHP Utah Basic Plus 2013 Plan as incorporated herein and available at http://insurance.utah.gov/health/healthreform.html.

(c) The PEHP Utah Basic Plus 2013 Plan was issued on July 1, 2013. Some of the benchmark plan benefits may not comply with current state or federal requirements.

(2)(a) Except as provided in Subsection (b) and (c), an individual or small employer carrier who issues or renews a non-grandfathered plan on or after January 1, 2014, must include at a minimum the benefits of the Utah Essential Health Benefits Package.

(b) A carrier may substitute coverage provided in the Utah Essential Health Benefits Package as long as substitutions are actuarially equivalent and complies with the standards set forth in 42 CFR 457.431.

(c) A health benefit plan may exclude the pediatric dental essential health benefit if there is at least one carrier offering a certified stand-alone dental plan that provides the pediatric dental essential health benefit in the PEHP Utah Basic Plus 2013 Plan.

(3) This rule does not prohibit an individual or small employer carrier from offering a non-grandfathered plan with benefits in addition to the Utah Essential Health Benefits Package.

R590-266-5. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-266-6. Severability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: essential health benefit insurance
May 23, 2016 31A-30-116(3)(b)

R600. Labor Commission, Administration.
R600-3. Definitions Applicable to Construction Licensees.
R600-3-1. Authority and Scope.

A. The Commission enacts this rule pursuant to authority granted by 34-28-2(2), 34A-2-103(8)(c), 34A-5-102(2) and 34A-6-103(2).

B. This rule defines terms and establishes procedures by which an unincorporated entity that is a construction licensee may rebut its status as an employer for purposes of Title 34, Chapter 28, Payment of Wages; Title 34A, Chapter 2, Workers' Compensation Act; Title 34A, Chapter 5, Utah Antidiscrimination Act; and Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

R600-3-2. Definitions.

A. An "active manager" is one who directs or causes the direction of the management and policies of the unincorporated entity, whether through the ownership of voting shares, by contract, or otherwise. Status as an active manager requires a documented history of voting on, approving, or otherwise deciding a substantial matter involving the business of the unincorporated entity, including without limitation:

1. Authorizing a member or any other person to do any act on behalf of the company that is not in the ordinary course of the company's business or business of the kind carried on by the company;

2. Making a distribution to members;

3. Resolving a dispute connected with the company's business;

4. Making a substantial change in the business purpose of the unincorporated entity;

5. Authorizing the unincorporated entity to acquire or merge with another entity; or

6. Authorizing a sale, lease, exchange or other disposition of a substantial asset of the unincorporated entity, other than in the usual and regular course of the business.

B. "Directly holds at least an 8% ownership interest" means that the individual owns in his or her individual capacity at least 8% of the stock, capital, or equity of the unincorporated entity, or is entitled to at least 8% of the unincorporated entity's profits. C. "Indirectly holds at least an 8% ownership interest" means that the individual's total aggregate ownership interest from all sources, including a corporation, partnership, estate, trust or some other form of beneficial interest, totals at least 8% of the unincorporated entity's stock, capital, equity, or profits.

1. For example, if an individual owns 50% of company A which in turns owns 20% of the subject unincorporated entity, then the individual holds a 10% indirect ownership interest in the unincorporated entity.

D. "Subject to supervision or control in the performance of work" means that:

1. The unincorporated entity has the right to control what the worker does and how he or she does it, regardless of whether the unincorporated entity actually exercises that authority; or

2. The unincorporated entity has the right to control the business aspects of the work, such as:

a. How the worker is paid;

b. Whether expenses are reimbursed;

c. Who is responsible to provide tools and supplies;

d. Who arranges for administrative support, advertising, and similar functions.

R600-3-3. Procedures to Challenge Presumption that Unincorporated Entity is the Employer.

A. Declaratory Actions. An interested party may request a determination regarding an unincorporated entity's status as an employer by filing a petition for declaratory order in accordance with Rule R600-1.

B. In Connection with Other Adjudicative Proceedings.

1. In proceedings to adjudicate a claim of unpaid wages, employment discrimination, or violation of occupational safety and health standards, an unincorporated entity may submit evidence that rebuts the presumption that the unincorporated entity is an employer,

2. Notwithstanding the burden of proof required to prove the underlying claim, the unincorporated entity may only rebut the presumption that it is the employer by clear and convincing evidence.

KEY: labor commission, unincorporated entity, construction licensees
December 8, 2011 34A-1-104
Notice of Continuation May 27, 2016

R657. Natural Resources, Wildlife Resources.
R657-48. Wildlife Species of Concern and Habitat Designation Advisory Committee.
R657-48-1. Authority and Purpose.

(1) Pursuant to Sections 23-14-19 and 63-34-5(2)(a) of the Utah Code, this rule:

(a) establishes the Wildlife Species of Concern and Habitat Designation Advisory Committee;

(b) defines its purpose and relationship to local, state and federal governments, the public, business, and industry functions of the state;

(c) defines the Utah Sensitive Species List; and

(d) defines the procedure for:

(i) the designation of wildlife species of concern as part of a process to preclude listing under the ESA; and

(ii) review, identification and analysis of wildlife habitat designation and management recommendations relating to significant land use development projects.

R657-48-2. Definitions.

(1) The terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Committee" means the Wildlife Species of Concern and Habitat Designation Advisory Committee.

(b) "Conservation species" means wildlife species or subspecies that are currently receiving special management under a conservation agreement developed or implemented by the state to preclude the need for listing under the ESA.

(c) "Department" means the Department of Natural Resources.

(d) "Division" means the Division of Wildlife Resources within the Department.

(e) "ESA" means the federal Endangered Species Act.

(f) "Executive Director" means Executive Director of the Department.

(g) "Habitat identification material" means maps, data, or documents prepared by the Division in the process of specifying wildlife habitat.

(h) "Management recommendations" means determinations of, amount of, level of intensity, timing of, any restrictions, conditions, mitigation, or allowances for activities proposed for a project area pursuant to this rule.

(i) "NEPA" means the National Environmental Policy Act as defined in 42 U.S.C. Section 4321-4347.

(j) "Interested Person" means an individual, firm, association, corporation, limited liability company, partnership, commercial or trade entity, any agency of the United States Government, the State of Utah, its departments, agencies and political subdivisions.

(k) "Project area" means the geographical area covered by a significant land use development.

(l) "Proposed wildlife habitat designation" means identified habitat in a project area undergoing review pursuant to this rule.

(m) "Significant land use development" means any project or development identified as such by the Executive Director, or as approved through petition as described in Section R657-48-5.

(n) "Wildlife habitat designation document" means the written decision of the Executive Director after following the provisions of this rule for wildlife habitat designation and management recommendations for a project area.

(o) "State sensitive species" means:

(i) wildlife species or subspecies listed under the ESA, and now or previously present in Utah;

(ii) wildlife species or subspecies de-listed under the ESA during the past six months that are now or were previously present in Utah;

(iii) wildlife species or subspecies now or previously present in Utah that are currently proposed by the U.S. Fish and Wildlife Service for listing under ESA;

(iv) candidate wildlife species or subspecies under the ESA now or previously present in Utah;

(v) wildlife species or subspecies removed from the ESA candidate list during the past six months that are now or were previously present in Utah;

(vi) conservation species; or

(vii) wildlife species of concern.

(p) "Wildlife habitat designation" means the wildlife habitat identification within a project area issued pursuant to this rule.

(q) "Wildlife habitat identification" means the description, classification and assignment by the Division of any area of land or bodies of water as the habitat, range or area of use, seasonally, historically, currently, or prospectively of or by any species of game or non-game wildlife in the State of Utah.

(r) "Wildlife species of concern" means a wildlife species or subspecies within the state of Utah for which there is credible scientific evidence to substantiate a threat to continued population viability.

(s) "Wildlife species of concern designation" means the decision to bestow wildlife species of concern status on a wildlife species or subspecies, or remove wildlife species of concern status from a wildlife species or subspecies, pursuant to this rule.

(t) "Utah Sensitive Species List" means the list of all current state sensitive species.

R657-48-3. Department Responsibilities.

(1) There is established a Wildlife Species of Concern and Habitat Designation Advisory Committee within the Department of Natural Resources.

(2) The Department shall provide staff support, arrange meetings, keep minutes, and prepare and distribute final recommendations.

R657-48-4. Committee Membership and Procedure.

(1) Committee membership shall consist of:

(a) the Executive Director of the Department;

(b) the Director of the Utah Public Lands Policy Coordinating Office or a designee;

(c) the Director of the Division or a designee;

(d) the Director of the Division of Oil, Gas and Mining or a designee;

(e) the Director of the Division of Water Resources or a designee; and

(f) any other Department Division heads or designees as determined by the Executive Director of the Department.

(2) The Executive Director shall serve as chair.

(3) Three members, consisting of the Executive Director, the Division Director and the Director of the Division of Oil, Gas and Mining, shall constitute a quorum for meetings of the Committee.

(4) The Committee shall meet as specified by the Executive Director.

(5) The following procedure shall be used for submitting review items to the Executive Director for inclusion on the Committee agenda:

(a) the Division Director shall submit for committee review all proposed wildlife species of concern designations; and

(b) the Division Director shall submit for committee review any proposed or existing wildlife habitat designations and corresponding management recommendations within a project area.

(i) The Division shall support its proposals for wildlife species of concern designations, wildlife habitat designations and management recommendations with:

(A) studies, investigations and research supporting the need for the designations and the potential impacts of each proposal;

(B) field survey and observation data; and

(C) federal, state, local and academic information on habitat, historical distribution, and other data or information collected in accordance with generally accepted scientific techniques and practices.

(6) The Department will provide an analysis of potential impacts of the proposed designations and the existing social and economic needs of the affected communities and interests.

R657-48-5. Public Participation and Setting of Meeting Agenda.

(1) An interested person may petition the Executive Director for a hearing before the Committee to designate a project as a significant land use development for purposes of this rule.

(2) The Executive Director shall act to approve or disapprove a petition or extension request within 14 calendar days.

(3)(a) The agenda shall consist of items determined by the Executive Director, and copies shall be sent to Committee members and other interested persons as requested.

(b) The agenda shall be distributed at least 28 calendar days prior to the meeting.

(c) Requests to receive notices and agendas must be submitted in writing to the Executive Director's Office as provided in Subsection R657-48-9(1).

(4) Any interested person may:

(a) submit comments on proposed wildlife species of concern and wildlife habitat designations;

(i) comments must be submitted in writing to the Executive Director for review and must be submitted at least seven calendar days prior to the meeting;

(b) request an extension of up to 30 calendar days to review a proposed Committee action; or

(c) request to make an oral presentation before the Committee.

(i) An interested person seeking to make a presentation before the Committee concerning any matter under review, must submit a written request and supporting documentation to the Executive Director at least 14 calendar days prior to the meeting.

R657-48-6. Committee Review Actions.

(1) In conducting a review of issues, the Committee may:

(a) require additional information from the Division, the Department or interested persons;

(b) require the Division or interested persons to make presentations before the Committee or provide additional documentation in support or opposition of the recommendation;

(c) schedule additional meetings where public interest or agency concern merits additional discussion;

(d) undertake additional review functions as needed; or

(e) consider the need for involvement of other persons or agencies, or whether other action may be needed.

(2) Following the Committee's review and recommendation, the Executive Director shall:

(a) make a final determination and, if warranted, recommend the approval of any or all proposed wildlife species of concern designations to the Wildlife Board; or

(b) in the case of proposed wildlife habitat designations, make a final determination.

(3) The Executive Director's decision will be announced at that meeting, or the next formal meeting, on the proposed wildlife species of concern designations or habitat designations, unless an alternative time is required by federal or state law, or rule.

R657-48-7. Wildlife Species of Concern Designation Process.

(1) A wildlife species of concern designation shall be made only after the Executive Director, following consideration of the Committee's recommendations, has made a formal written recommendation to the Wildlife Board, and after that Board has considered:

(a) the Executive Director's recommendation, and all comments on such recommendation; and

(b) all data, testimony and other documentation presented to the Committee and the Wildlife Board pertaining to such proposed designation.

(2) All wildlife species of concern designations shall be made:

(a) pursuant to the procedures specified in this rule; and

(b) as an independent public rulemaking pursuant to the Administrative Rulemaking Act, Title 63G, Chapter 4 of the Utah Code.

(3) With each proposed wildlife species of concern designation, the accompanying analysis shall include either a species status or habitat assessment statement, a statement of the habitat needs and threats for the species, the anticipated costs and savings to land owners, businesses, and affected counties, and the inclusion of the rationale for the proposed designation.

(4) The Wildlife Board may approve, deny or remand the proposed wildlife species of concern designation to the Executive Director.

(5) Until a proposed wildlife species of concern designation is finalized, the proposed designation may not be used or relied upon by any governmental agency, interested person, or entity as an official or unofficial statement of the state of Utah.

(6) The Division shall maintain all data collected and other information relied upon in developing proposed wildlife species of concern designations as part of the administrative record and make such information available, subject to the Government Records Access and Management Act as defined in Section 62-2-101, for public review and copying upon request.

(7) The Division shall maintain the Utah Sensitive Species List and update the list as necessary to maintain consistency with Subsection R657-48-2(2)(o) as the statuses of sensitive species change due to one or more of the following:

(a) wildlife species of concern or other wildlife species are listed under ESA;

(b) wildlife species are de-listed under ESA;

(c) wildlife species' names change due to taxonomic revisions;

(d) new wildlife species of concern are designated pursuant to this rule;

(e) wildlife species of concern status is removed from species pursuant to this rule;

(f) conservation agreements are developed and implemented for species;

(g) conservation agreements become invalid;

(h) species become candidates for listing under ESA;

(i) species lose candidate status under ESA;

(j) species are formally proposed for listing under ESA by the U.S. Fish and Wildlife Service; or

(k) species lose proposed status under ESA.

(8) If a species designated as a wildlife species of concern is listed under ESA, is proposed for listing under ESA, becomes a candidate for listing under ESA, or becomes a conservation species, the changed species status will be reflected in the Utah Sensitive Species List. If the species subsequently loses its ESA status or the conservation agreement becomes invalid, the species will revert to wildlife species of concern status.

R657-48-8. Wildlife Habitat Designations and Management Recommendations.

(1) Wildlife habitat designations and management

recommendations for project areas will be made pursuant to the procedures specified by this rule.

(2) Any Department or Division map, identification of habitat, document or other material that is provided or released to, or used by any persons, including federal agencies, which includes wildlife habitat designations that have been adopted under this rule will so indicate.

(3) A proposed wildlife habitat designation and management recommendation shall be adopted by the Executive Director only after the Executive Director, following consideration of the Committee's recommendations, has considered all data, testimony and other documentation presented to the Committee pertaining to such proposed designation.

(4) Until a final determination on a proposed wildlife habitat and management recommendation has been made by the Executive Director, the proposed wildlife habitat or management recommendations may not be used or relied upon by any other governmental agency, interested person, or entity as an official or unofficial statement of the state of Utah.

(5) A Wildlife Habitat Designation document developed for the purpose of this rule, having been completed by the Executive Director, shall be attached to the wildlife habitat identification materials and made available for public review or copying upon request.

(6) The Division shall maintain all data collected and other information relied upon in developing proposed wildlife habitat designations and management recommendations as part of the administrative record, and make this information available in accordance with the Government Records Access and Management Act as defined in Section 62-2-101, for public review and copying upon request.

R657-48-9. Distribution.

(1) The Division shall send by mail or electronic means a copy of a proposed wildlife species of concern designation or wildlife habitat and management determination established under this rule to the following:

(a) any person who has requested in writing that the Division provide notice of any proposed wildlife species of concern designations or proposed wildlife habitat and management recommendations under this rule; and

(b) county commissions and tribal governments, which have jurisdiction over lands that are covered by a proposed wildlife habitat designation and management recommendation and of lands inhabited by a species proposed to be designated as a wildlife species of concern under this rule.

(2) Wildlife species of concern designations, wildlife habitat designations or management recommendations may not be used by governmental entities as a basis to involuntarily restrict the private property rights of landowners and their lessees or permittees.

KEY: species of concern, habitat designation
August 8, 2006 23-14-19
Notice of Continuation May 2, 2016 63-34-5(2)(a)

R850. School and Institutional Trust Lands, Administration.
R850-90. Land Exchanges.
R850-90-100. 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-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to specify application procedures and review criteria for the exchange of trust lands.

R850-90-150. Planning.

Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC);

2. Evaluation of and response to comments received through the RDCC process; and

3. Evaluation of and response to any comments received through the solicitation process conducted pursuant to R850-90-400(1).

R850-90-200. Exchange Criteria.

The agency may exchange trust land for land and other assets which the director finds suitable and of equal or greater value and utility.

1. Exchanges must clearly be in the best interest of the appropriate trust as documented in a director's finding. The finding shall address:

(a) the appraised value of affected lands and other assets and the amount of cash involved;

(b) the likelihood that the acquired land and other assets will provide income in excess of that being generated from existing trust land;

(c) an analysis of the revenue potential of the existing trust land; and

(d) potential management and administrative costs and opportunities.

2. The finding shall verify that the exchange will not result in an unmanageable and/or uneconomical parcel of trust land, nor eliminate access to a remnant holding, without appropriate remuneration or compensation.

3. The percentage of cash which may be included in an exchange shall not exceed 25% of the value of the trust land involved unless the director has determined that a higher percentage is in the best interests of the trust beneficiary.

R850-90-300. Application Requirements.

This section does not apply to exchange proposals initiated by the agency.

1. Preapplication review: In order to avoid unnecessary expenses, persons requesting an exchange shall be afforded the opportunity to discuss the concept of the exchange with the agency prior to submitting a formal application.

2. A completed application form must be received pursuant to R850-3.

R850-90-400. Competitive Offering.

1. Upon receipt of an exchange application, the agency shall solicit competing exchange proposals, lease applications and sale applications. Competing applications will be solicited through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the trust land is located. At least 30 days prior to consummation of an exchange, sale or lease, certified notification will be sent to permittees of record, adjoining permittees/lessees and adjoining landowners. Notices will also be posted in the local governmental administrative building or courthouse. Lease applications shall be processed in accordance with R850-30-500(2). Sale applications shall be reviewed pursuant to R850-80-500.

2. In addition to the advertising requirements of R850-90-400(1), the agency may advertise for competing applications for exchange, lease, or sale to the extent which the director has determined may reasonably increase the potential for additional competing applications.

3. The agency shall allow all applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt (Postal Service form 3800), within which to submit a sealed bid containing their proposal for the subject parcel. Competing bids will be evaluated using the criteria found in R850-30-500(2)(g), R850-80-500, and R850-90-200.

R850-90-500. Determination for the Exchange of Trust Lands.

1. The agency shall choose the successful applicant by conducting a market analysis pursuant to R850-80-500(2) on each option for which an application has been received. The determination as to which application will be approved shall be based on R850-80-500(3) and R850-90-200(2).

2. The successful applicant shall be charged an amount equal to all appraisal and advertisement costs. All monies, except application fees, tendered by unsuccessful applicants will be refunded.

3. The director may approve the exchange when the criteria specified in R850-90-200 have been satisfied.

4. Applicants desiring reconsideration of agency action relative to exchange determinations may petition for review pursuant to agency rule.

R850-90-600. Land Exchange Appraisals.

1. The agency shall contract for appraisals of properties proposed for exchange utilizing the deposit paid by the applicant. Appraisals to determine values of trust land shall be provided protected records status pursuant to Subsection 63G-2-305(7).

2. Appraisals for land exchanges with the federal government shall be, whenever possible, completed jointly and be subject to review and approval of both parties and to agreements undertaken pursuant to the Federal Land Exchange Facilitation Act, 43 U.S.C. 1716.

R850-90-700. Private Exchange Procedures.

1. Political subdivisions of the state and agencies of the federal government shall be eligible for private exchange.

2. In order to determine that a private exchange is in the best interests of the trust beneficiaries, advertising to provide notice of this action shall be required pursuant to Section 53C-4-102(3). The cost of this advertising shall be negotiated.

3. All agency rules governing land exchanges shall apply to private exchanges except R850-90-400 and R850-90-500. R850-90-300(2), R850-90-500(2), and R850-90-900(4) may be waived when the agency is a co-applicant.

R850-90-800. Existing Improvements.

Any exchange of trust land upon which authorized improvements have been made shall be subject to the reimbursement of the depreciated value of the improvements to the owner of the improvements by the person receiving the land in the exchange.

R850-90-900. Mineral Estates and Leases.

1. Trust Lands Administration mineral interests may be exchanged in accordance with Section 53C-2-401(2).

2. Mineral estate exchanges must clearly be in the best interest of the applicable trust as documented by the agency's record. The record shall address those criteria listed in R850-90-200.

3. In exchanges with persons other than the federal government, all mineral estates are reserved to the Trust Lands Administration unless exceptional circumstances justify the exchange of the mineral estate.

4. Upon the exchange of Trust Lands Administration mineral estate, Trust Lands Administration mineral leases shall continue to be administered by the agency until the termination, relinquishment or expiration of the lease. Upon termination of the mineral lease the administration of the mineral estate transfers to the acquiring party.

5. Acquired mineral estates shall be managed in accordance with Sections 53C-2-407(3), 53C-2-412 and 53C-2-413.

R850-90-1000. Existing Rights on Acquired Lands.

Valid existing rights on lands acquired from the federal government will be managed in accordance with Sections 53C-5-102(2) and 53C-4-301(2).

R850-90-1100. Existing Leases and Permits.

Prior to completion of exchanges, Trust Lands Administration lessees and permittees shall be notified and leases and permits cancelled or amended in accordance with the terms of the lease or permit.

KEY: land exchange, administrative procedures
May 24, 2016 53C-1-302(1)(a)(ii)
Notice of Continuation January 12, 2012 53C-2-201(1)(a)
53C-4-101(1)
53C-4-102

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 stepsisters;

(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 determinated 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 unforseen 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 subsequence 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 a payment to help defray the costs of that activity in addition to the standard financial assistance payment. Approved enhanced participation activities and the payment amount are listed in Department policy.

(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 earned and 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
May 3, 2016 35A-3-301 et seq.
Notice of Continuation September 2, 2015

R994. Workforce Services, Unemployment Insurance.
R994-302. Employer Contribution Payments.
R994-302-101. Employer Responsibilities.

An employer must notify the Department that it has entered into a business, to report wages paid, to make payments of contributions based on those wages, and to comply with instructions on report forms issued by the Department. An employer must also notify the Department of changes in the business that might affect filing reports or paying contributions.

R994-302-102. Due Dates for Contribution Payments.

(1) Quarterly contribution payments are due from employers who are subject to the Utah Employment Security Act except as noted in subsections (2) and (3) of this section. The payment is due on the last day of the month that follows the end of each calendar quarter unless the Department, after giving written notice, changes the due date. Interest and penalties for late payments begin to accrue the day after the due date. Contribution payments postmarked on or before the due date are considered paid timely.

(2) Domestic employers defined in Subsection 35A-4-204(2)(k) may elect to pay contributions annually. The payment is due on January 31 of the year following the year wages were paid.

(3) Employers with seasonal employment may petition the Department to only pay contributions one, two, or three calendar quarters a year. The payment is due on the last day of the month that follows the end of the calendar quarter unless the Department, after giving written notice, changes the due date.

(4) The Department may establish a different due date for the payment of contributions when:

(a) The employing unit can show a reasonable basis for contending that the status of the employing unit as an employer, the status of any service performed for the employer, or the status of any contribution liability is doubtful. Appealing or disagreeing with the Department's decision regarding the employer's status or status of the liability does not in itself show the status is doubtful. Some examples of when a separate due date may be established by the Department are when an employer can show a reasonable basis for erroneously:

(i) reporting wages to another state;

(ii) not reporting wages it considered to be exempt as agricultural labor; or

(iii) not reporting wages for individuals it considered exempt from employment.

(b) The possible collection of any contribution will be jeopardized by delaying the collection thereof until the regular due date.

(5) An extension of up to 90 days for making quarterly payments may be granted if the employer makes a written request within ten days after the date the written demand for payment is mailed by the Department. Further extensions may be granted if in the judgment of the Department an extension would preserve the possibility of collecting payments due. Interest will accrue on the outstanding balance from the original due date.

R994-302-103. Contribution Payments.

The contributions due will be based on wages paid during the quarter for subject employment, as defined by Section R994-401-205.

(1) All contributions or other payments should be made payable in United States currency to the Utah Unemployment Compensation Fund or to a depository account specified by the Department or Utah State Treasurer.

(2) Contribution payments will be reflected on the Department records on the day received. Payments other than cash will constitute payment on the day received only if honored by the financial institution. In the event that the payment is not

honored in full, the Department will remove the dishonored payment from the employer's account and may assess fees as provided for in Section 35A-4-305 and Utah Code Title 07, Chapter 15.

(3) If a non-cash payment instrument has been given in payment and has been returned by the depository institution unpaid, the Department reserves the right thereafter to accept from the employer only cash, certified cashier's check, or money order.

(4) Contributions, interest or penalty payments received without a report or billing will be applied first to any unpaid costs, then to the oldest quarter in which an amount is due and will be applied first to the contributions, then to the interest and finally to the penalties due in that quarter. Payments will be applied in this manner unless the employer or Department specifies otherwise. Payments accompanied by a contribution report or a billing will be applied to the quarters shown on that report or billing.

R994-302-104. Due Dates for Filing Contribution and Equivalent Reports.

(1) Contribution reports and any equivalent reports required of those employers liable for payments in lieu of contributions are due quarterly on the last day of the month that follows the end of each calendar quarter; unless the Department, after giving written notice, changes the due date. Reports postmarked on or before the due date are considered filed timely.

(a) Extension for Filing Reports.

The Department may, for good cause, grant an extension of time for filing a report if the employer makes a written request not later than the due date of the report.

R994-302-105. Other Responsibilities of the Employer.

(1) The executor or administrator of an employer's estate must give written notice of the employer's death to the Department as soon as practicable.

(2) An employer must immediately notify the Department of commencement of any receivership or similar proceeding, or of any assignment for the benefit of creditors, and of any court order with respect to the foregoing. An employer must immediately notify the Department of the filing of any voluntary or involuntary petition in bankruptcy or other proceeding under the Federal Bankruptcy Act.

(3) An employer, receiver, trustee, executor, administrator, or other person appointed under the laws of the State of Utah who is in control of the assets of an employer, must file timely with the Department all reports that are required.

R994-302-106. Adjustments and Refunds.

Adjustments or refunds for contributions overpaid will be made as provided by Subsection 35A-4-306(5). Adjustments for reports not filed or for reports and contributions filed incorrectly will be made as provided by Subsection 35A-4-305(2).

KEY: unemployment compensation, employer liability
July 1, 2007 35A-4-302
Notice of Continuation May 3, 2016

R994. Workforce Services, Unemployment Insurance.
R994-308. Bond Requirement.
R994-308-101. Authority to Require a Bond.

To ensure compliance with the contribution provisions of the Act, the Department may require an employer to provide a bond or other security deposit under Subsection 35A-4-308(1).

R994-308-102. Types of Deposits.

A cash deposit will generally be required, however, at the Department's discretion, other forms of security may be accepted.

R994-308-103. Reasons for Requiring a Deposit.

(1) A deposit may be required whenever circumstances would reasonably cause doubt as to an employer's future compliance with the provisions of the Act. Failure to comply includes such things as failing to file reports, pay amounts due, file a wage list or comply with other requests made by the Department. Some of the more common reasons for requiring a deposit are;

(a) the employer's past failure to comply,

(b) the employer is an out-of-state employer and has workers in Utah,

(c) the employer is in an industry where the rate of past failure to comply is high, or

(d) the employer's or principal's past failure to comply in other businesses with which the employer or principal is or has been affiliated.

R994-308-104. Amount of Deposit.

(1) When a deposit is required from a contributory employer, the deposit shall be the greater of $1000 or three times the quarterly contribution liability currently accruing or expected to accrue.

(2) When a deposit is required from a reimbursable governmental or Indian tribal employer, the deposit shall be the greater of $1000 or nine times the monthly benefit charges currently accruing or expected to accrue.

R994-308-105. Disposition of Deposit.

If the employer fails to comply with the Act after making the required deposit, the Department will use the deposit to pay amounts due as defined by Subsection R994-302-103(4). The Department may then require a new deposit.

R994-308-106. Interest Earned on Deposits.

Interest earned on cash deposits will be paid into the same fund as other interest and penalties collected by the Department as provided by Subsection 35A-4-305(1)(e).

KEY: unemployment compensation, bonding requirements
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