

R25. Administrative Services, Finance.**R25-2. Finance Adjudicative Proceedings.****R25-2-1. Informal Proceedings.**

(1) All matters over which the division has jurisdiction and which are subject to Section 63G-4-203 will be informal in nature for purposes of adjudication. The division director or his designee will preside over any proceeding.

(2) Procedures Governing Informal Adjudicatory Proceedings.

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

(b) The division shall hold a hearing only if a hearing is required by statute, or is permitted by statute and a request for hearing is made within ten days after receipt of the notice of division action or request for division action.

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

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

(e) No discovery, either compulsory or voluntary will be permitted except that all parties to the action shall have access to information contained in the division's files and investigatory information and materials not restricted by law.

(f) No person, as defined in the Utah Administrative Procedures Act, Subsection 63G-4-103(1)(g), may intervene in a division action unless federal statute or rule requires the division to permit intervention.

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

(h) Within thirty days after the close of any hearing held under this rule, or after the failure of a party to request a hearing, the division director shall issue a written decision stating the decision, the reasons for the decision, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(i) The division director's decision shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.

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

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

(3) Appeals regarding administrative offsets must be made in writing and within 30 days of the date of receipt of a letter of notification of an administrative offset and directed to the Division of Finance, 2110 State Office Building, Salt Lake City, Utah 84114.

(4) All other appeals must be made in writing and directed to the Division of Finance, 2110 State Office Building, Salt Lake City, Utah 84114.

**KEY: government hearings, finance
1992**

63G-4-203

Notice of Continuation September 20, 2016

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

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

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

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

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

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

R27-4-2. Fleet Standards.

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

(a) a Standard State Fleet Vehicle (SSFV)

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

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

(a) a SSFV

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

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

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

R27-4-3. Delegation of Division Duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R27-4-4. Vehicle Replacement.

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

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

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

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

(a) Passenger space

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

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

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

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

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

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

R27-4-5. Fleet Expansion.

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

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

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

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

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

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

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

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

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

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

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

- (a) Passenger space
- (b) Type of items carried
- (c) Hauling or towing capacity
- (d) Police pursuit capacity
- (e) Off-road capacity
- (f) 4x4 capacity
- (g) Emergency service (police, fire, rescue services) capacity
- (h) Attached equipment capacity (snow plows, winches, etc.)

(i) Other justifications as approved by the Director of DFO or the director's designee.

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

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

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

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

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

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

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

feature or miscellaneous equipment upgrade occurs when an agency requests:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) item description or nomenclature; and

(ii) manufacturer of item; and

(iii) item identification information for ordering purposes; and

(iv) procurement source; and

(v) purchase price of item; and

expected life of item in years; and

(vi) warranty period; and

(vii) serial number;

(viii) initial installation date; and

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

(x) anticipated replacement date of item; and

(xi) actual replacement date of item; and

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

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

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

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

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

R27-4-8. Vehicle Class Differential Upgrade.

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

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

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

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

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

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

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

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

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

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

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

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

R27-4-9. Cost Recovery.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R27-4-10. Executive Vehicle Replacement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) year, make and model;

(b) vehicle identification number (VIN);

(c) actual miles traveled per month;

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

(e) location of the vehicle;

(f) class code and replacement cycle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

KEY: fleet expansion, vehicle replacement

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

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

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

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

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

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

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

R27. Administrative Services, Fleet Operations.**R27-5. Fleet Tracking.****R27-5-1. Authority.**

(1) This rule is established pursuant to Subsection 63A-9-401(1)(c), which requires the Division of Fleet Operations (DFO) to establish one or more fleet automation and information systems for state vehicles.

(2) The purpose of this section is to insure that state vehicles and miscellaneous equipment under the ownership or control of all state agencies are accounted for and properly inventoried.

R27-5-2. Items Tracked in the Fleet Information System.

(1) All "State Vehicles," as defined in Subsection 63A-9-101(7) shall be tracked in DFO's fleet information system.

(2) For the purpose of managing the state fleet, DFO makes a definitional distinction between the following categories of state vehicles:

- (a) "Light Duty Vehicle" as defined in R27-1-2;
- (b) "Heavy Duty Vehicle" as defined in R27-1-2;
- (c) "Non-road vehicle," as defined in R27-1-2;
- (d) "Unique Motorized Equipment," as defined in R27-1-

2.

(3) "Miscellaneous Equipment," as defined in R27-1-2, may be tracked in DFO's fleet information system.

(4) Each agency shall be responsible for entering and maintaining accurate data about each motor vehicle that it owns, operates, or otherwise controls, into DFO's fleet information system.

(5) The division shall provide each agency with program access, software updates, licensing fee requirements, system reports, LAN coordination, user manuals, help-desk access, and user training necessary to maintain and operate the division's fleet information system to track state vehicles.

(6) The costs associated with tracking state vehicles shall be a component of the MIS rate.

KEY: state fleet information system

April 8, 2002

63A-9-402(1)(b)

Notice of Continuation September 23, 2016

R27. Administrative Services, Fleet Operations.**R27-6. Fuel Dispensing Program.****R27-6-1. Authority.**

This rule is established pursuant to subsections 63A-9-401(1)(d)(vi) and 63A-9-401(1)(f) which require the Department of Administrative Services, Division of Fleet Operations (DFO) to make rules establishing requirements for fuel management programs, and to create and administer a fuel dispensing services program.

R27-6-2. Participation.

(1) Pursuant to Subsection 63A-9-401(5)(a)(i), each state agency and each institution of higher education shall subscribe to the fuel dispensing services provided by the division.

(2) Pursuant to Subsection 63A-9-401(5)(a)(ii), state agencies may not provide or subscribe to any other fuel dispensing services, systems, or products other than those provided by DFO.

(3) Counties, municipalities, school districts, special districts and federal agencies may subscribe to fuel dispensing services provided by DFO.

R27-6-3. State Fuel Network.

(1) The state fuel network consists of all fuel sites owned, leased or under the control of the DFO; all state agencies including institutions of higher education; all counties, municipalities, school districts, and special districts that subscribe to the services provided by DFO; and all privately owned fuel sites that participate in the Utah Fuel Card program.

R27-6-4. Cost Recovery.

(1) DFO shall establish, for each fiscal year, fuel rates designed to recover the costs associated with the purchase of fuels and overhead costs associated with running the state fuel dispensing network.

R27-6-5. Authority to Issue a State of Utah Fuel Card.

(1) Except when delegated pursuant to the provisions of R27-6-6, the authority to issue State of Utah Fuel Cards (fuel card) and assign Personal Identification Numbers (PIN) resides exclusively with DFO.

(2) All fueling cards associated with state vehicles shall be documented in the fleet information system. Only one fuel card shall be issued to each vehicle. The PIN issued by the fuel card system to individual employees for their exclusive use is an electronic "signature" of the person to whom it is issued. Use of the fuel card and PIN are restricted to fueling the vehicles to which the fuel card was issued.

(3) Requests for fuel cards and/or PINs shall be documented in the Information Technology Services (ITS) Helpdesk software.

(4) Standard Fuel Network Vehicle and Employee PIN worksheets shall be used when requesting fuel cards and PINs.

(5) DFO shall distribute to each agency a monthly report showing all active fuel cards issued to the respective agencies.

(a) Agencies shall review the monthly reports and notify the State Fuel Technicians in charge of fuel cards of any discrepancies discovered.

(b) State Fuel Technicians shall investigate the discrepancy and make the necessary changes to the fuel card program and the fleet information system.

(6) Agencies may request that a fuel card history report accompany the monthly active fuel card report.

(7) In the event that a fuel card is no longer required due to card expiration, malfunction, loss, misuse, or the vehicle's disposal, the card shall be deleted from the fleet fuel card system and identified as "expired" in the fleet information system. No modifications to the fuel card shall be allowed.

(8) Only State Fuel Technicians have the authority to make

changes to fuel card information and to delete fuel cards from the system.

(9) In the event that a fuel card is either lost or stolen, the operator shall immediately report the loss or theft of the fuel card to DFO.

R27-6-6. Delegation of Authority to Issue Fuel Cards and Assign PINS.

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of Administrative Services, may delegate the authority to issue fuel cards and assign PINs to other state agencies and institutions by contract or other means authorized by law, if,

(a) the state agency or institution has requested the authority; and

(b) in the judgment of the director, the state agency or institution has the necessary resources and skills to perform the delegated responsibilities.

(2) The delegation shall contain the following:

(a) a precise definition of each function to be delegated;

(b) a clear description of the standards to be met in performing each function delegated, including but not limited to,

(i) a provision that the vehicles for which the fuel cards are being issued, and to which the PINs are being assigned, are or will be capital only lease vehicles; and

(ii) a provision that the vehicle for which the fuel card is being issued, and to which the PIN is being assigned, is allocated or assigned to the agency issuing both the fuel card and the PIN; and

(iii) a provision that the vehicles for which the fuel cards are being issued, and to which the PINs are being assigned, are in DFO's fleet information system.

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

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

(3) An agency given the authority to issue fuel cards and assign PINs shall not issue fuel cards for vehicles not in DFO's fleet information system.

(4) An agreement to delegate functions to a state agency or institution may be terminated by DFO if the results of administrative audits conducted by either DFO or the Department of Administrative Services reveal a lack of compliance with the terms of the agreement by the state agency or institution.

(5) In the event that a fuel card, issued by an agency other than DFO is either lost or stolen, the operator shall immediately report the loss or theft of the fuel card to the issuing agency.

R27-6-7. Authorized Use of a State of Utah Fuel Card.

(1) The following procedures shall be followed when purchasing fuel from either a state run or a participating commercial public fueling site:

(a) Verify that the vendor is a participant in the State Fuel Network Program; and

(b) Follow the procedures that apply to the particular site and enter the correct information when prompted in order to purchase fuel.

(2) Except as provided in paragraph 3 of this section, the fuel card shall only be used to purchase:

(a) Fuel; and

(b) Fluids, car washes and minor miscellaneous items for state vehicles whose value, taken together, shall not exceed the monthly monetary limits determined by DFO.

(3) Agency requests for a fuel card for use by a supervisor for emergency purposes, or for use with small miscellaneous equipment shall be approved provided the agency:

(a) Represents that they have a reconciliation or fuel

transaction auditing process in place for the review of miscellaneous transactions in order to prevent theft, abuse and fraud relating to the use of the card; and

(b) Cooperates with DFO to insure all fuel dispensed using fuel cards not assigned to specific vehicles is properly documented in the fleet information system through the use of a manual fuel ticket.

R27-6-8. Reimbursements.

(1) Reimbursements for the use of the operator's personal funds in order to purchase fuel and/or other services shall be granted:

(a) when the operator has verified that the vendor is a participant in the State Fuel Network Program and at the time when fuel was being purchased, there was a problem with either the PIN or card reader that could not be repaired prior to purchase; or

(b) when the operator purchases from a vendor that is not a participant in the State Fuel Network and there is no participating vendor in the immediate vicinity of the non-participating vendor.

(c) at the discretion of the fuel network manager when circumstances indicate that the use of personal funds was necessary.

R27-6-9. Meter Rejects.

(1) Drivers of state vehicles are required to enter the correct mileage, excluding tenths of miles, when using the fuel card assigned to the vehicle.

(2) In the event that the driver makes an error in the mileage update, the driver or the agency's contact shall provide designated DFO personnel with a correct mileage update.

(3) In the event that an individual operating a state vehicle inputs a blatant error meter reject, DFO will impose on the agency, an one time charge (OTC) in accordance with applicable rate schedule. A blatant error meter reject occurs when the operator enters the same number as the mileage (e.g., 000000) or enters a fictitious number that is not close to the current odometer reading (e.g., 123456). DFO may, upon request by the agency, allow five business days during which to investigate a blatant error. If the blatant error is deemed to have been the result of equipment failure, DFO will not impose the OTC.

(4) Agency contacts shall, within five business days of the request, respond to a DFO request to investigate a meter reject. In the event that the agency fails to respond or make arrangements for an extension of the time period in which to investigate the meter reject, DFO will impose an OTC in accordance with the applicable rate schedule, upon the agency.

R27-6-10. Bulk Fuel Purchases.

(1) For all fuel sites for which DFO purchases fuel:

(a) The authority to purchase bulk fuel resides exclusively with DFO.

(b) All fuel stored at, or contained in, fuel sites for which DFO purchases fuel shall be the property of the State of Utah, DFO.

R27-6-11. Fuel Site Maintenance.

(1) All fuel sites in the state fuel network for which DFO purchases fuel shall be managed by the DFO. All fuel sites for which DFO does not purchase fuel shall be managed by the agency, subscribing county, municipality, school district, or special district that has ownership, possession, or control of the site.

(2) Except for privately owned, leased or controlled fuel sites, maintenance at all other fuel sites in the State Fuel Network, shall be performed only by personnel of the DFO and/or their authorized agents.

(3) Only DFO personnel and/or authorized agents shall be

authorized to disconnect power or communication from any fueling equipment, including, but not limited to, tanks and monitoring equipment.

(4) Personnel of agencies, subscribing counties, municipalities, school districts and special districts at fuel sites shall not perform, or give authorization to perform, any site maintenance.

(c) Personnel of agencies, subscribing counties, municipalities, school districts and special districts at fuel sites shall report any maintenance concerns to the DFO.

(d) Personnel of agencies, subscribing counties, municipalities, school districts and special districts at fuel sites shall provide DFO, its employees and/or authorized agents, 24-hour access to fuel sites for any maintenance or service needs.

(4) In the event that a fuel site operated by an agency, subscribing county, municipality, school district or special district is not part of the Utah Fuel card system, it shall be the responsibility of the fuel site personnel to keep records of all following information for entry into the fleet information system:

(a) Correct odometer reading;

(b) Operators' PIN;

(c) Vehicle number or license plate number;

(d) Other information as required by DFO.

R27-6-12. Underground Fuel Storage Tanks.

(1) DFO shall be responsible for coordinating the installation of state owned underground storage tanks and the upgrading, retrofitting, repair or removal of existing underground storage tanks located on or about property, easements or rights of way owned, leased or otherwise controlled by agencies.

(2) DFO shall be responsible for paying for all operations related to the installation, upgrading, retrofitting, repair or removal of underground fuel storage tanks listed in its Underground Storage Tank Inventory.

(3) The costs associated with all operations related to the installation, repair or removal of Underground Fuel Storage Tanks that are not contained in DFO Underground Storage Tank Inventory shall be the responsibility of the agency having ownership, possession or control of the site in which the storage tank is found.

(4) All agency fuel site personnel shall provide DFO, its employees and/or authorized agents, 24-hour access to fuel sites for any storage tank maintenance or service needs.

R27-6-13. Abuse and Neglect of Fueling Equipment.

Damage to fuel equipment that results from the abuse or neglect of an operator shall be the responsibility of the agency employing the operator at the time of the incident.

R27-6-14. Delegation of Authority to Manage and Maintain Fuel Storage Tanks.

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of Administrative Services, may delegate the authority to manage and maintain fuel storage tanks holding fuel that is not for use in motor vehicles, to other agencies or institution, by contract or other means authorized by law, if:

(a) the state agency or institution has requested the authority; and

(b) in the judgment of the director, the state agency or institution has the necessary resources and skills to perform the delegated responsibilities.

(2) The delegation shall contain the following:

(a) a precise definition of each function to be delegated;

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

(c) a provision for periodic administrative audits by either

DFO or the Department of Administrative Services; and

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

(3) An agreement to delegate functions to a state agency or institution may be terminated by DFO if the results of administrative audits conducted by either DFO or the Department of Administrative Services reveal a lack of compliance with the terms of the agreement by the state agency or institution.

KEY: fuel dispensing

January 10, 2005

63A-9-401(1)(c)(vi)

Notice of Continuation September 23, 2016 63A-9-401(1)(e)

R27. Administrative Services, Fleet Operations.**R27-8. State Vehicle Maintenance Program.****R27-8-1. Authority.**

This rule is established pursuant to Subsections 63A-9-401(1)(d)(i) and (iv), which require the Department of Administrative Services, Division of Fleet Operations (DFO) to establish rules governing maintenance operations for state vehicles, and preventative maintenance programs.

Unless specifically exempted in writing by DFO, agencies shall comply with the preventive maintenance and repair provisions of this rule.

R27-8-2. Preventive Maintenance.

(1) Preventive maintenance (PM) shall be performed in accordance with the schedule set forth in the Preventive Maintenance Program Coupon Book that accompanies each full service lease vehicle. The Preventive Maintenance Program Coupon Book is located in the glove compartment of each full service lease vehicle.

(2) The driver or agency shall take the vehicle to a vendor that participates in the vendor's service network. In the event that a driver needs to locate a service facility, the vendor will direct the driver to the nearest service facility that participates in the vendor's service network.

(3) Agencies leasing state vehicles are responsible for complying with annual safety and emission inspections required by state law.

(a) Inspection compliance certificates shall be forwarded to the DFO offices for vehicle registration.

(4) When taking a state vehicle in for preventive maintenance, the drivers shall present the Preventive Maintenance Coupon Book to the vendor.

R27-8-4. Repairs.

(1) In the event a state vehicle is in need of repair(s), the driver shall contact the vendor prior to having any services performed. A toll free telephone number is listed on the front cover of the Driver Operating Manual and the Program Information Booklet.

(a) The driver of the vehicle shall provide the vehicle number and odometer reading to the vendor.

(b) In the event that a driver needs to locate a service facility, the vendor will direct the driver to the nearest service facility that participates in the vendor's service network.

(c) In the event that the vehicle is already in a service facility, the driver shall direct the shop to contact the vendor. Authorization to perform the required repairs shall be given by the vendor.

(2) When taking a state-owned vehicle in for repair(s), the driver shall identify the vehicle as belonging to DFO, and not the division or department to which the vehicles are leased.

R27-8-5. Agency Maintained Repair Shop Parts Inventory.

(1) Agencies with capital only lease vehicles may, at their own expense maintain and operate maintenance and repair facilities to care for leased vehicles.

(2) All maintenance and repair shop personnel working on capital only lease vehicles shall be trained in the use of DFO's fleet information system, specifically the work-order ticket module of the system.

(3) All maintenance and repairs performed on capital only lease vehicles shall be entered into the fleet information system work-order module within 24 hours of the completion of the work.

(4) All maintenance and repairs performed or done on full service leased vehicles shall require prior approval from the vendor for preventive maintenance and repair services. The agency maintenance and repair facility shall bill the vendor for services rendered.

(5) Agency maintenance and repair facilities shall comply with all state and federal law, state and federal rules and regulations governing motor vehicle maintenance and repair facilities.

KEY: vehicle maintenance, repair, vendor approval

April 8, 2002

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

Notice of Continuation September 23, 2016 63A-9-401(1)(d)(iv)

R27. Administrative Services, Fleet Operations.**R27-9. Dispensing Compressed Natural Gas to the Public.****R27-9-1. Authority.**

This rule is established pursuant to subsections 63A-9-702(3) which requires the Department of Administrative Services, Division of Fleet Operations (DFO) to make rules establishing requirements for the sale of compressed natural gas (CNG) to the public.

R27-9-2. Definitions.

In addition to the terms defined in Section 63A-9-702, as used in Title 63A, Chapter 9, or these rules, the following terms are defined.

(1) "Public" means private individuals or entities as defined in 63A-9-702(1).

(2) "State site" means a fuel site owned and/or operated by the State Fuel Network which dispenses compressed natural gas.

(3) "Geographical compressed natural gas needs of a private individual or entity" means providing CNG fuel to the public beyond one road mile from a privately owned and operated fuel site that is able to meet the natural gas distribution needs of the public.

R27-9-3. Fuel Site Availability.

(1) The division will allow the public to purchase compressed natural gas from the state's fuel network if:

(a) there is no commercial fuel site that meets the geographical compressed natural gas distribution needs as defined in R27-9-2(3) and;

(b) there are no emergencies that warrant the holding of compressed natural gas in reserve for use by state or emergency vehicles as determined by the division.

R27-9-4. Terms of Operation.

(1) State owned CNG fuel sites are intended to be operational 24 hours a day, 7 days a week and will be available to the public with the exception of locally posted time restrictions.

(2) CNG dispensing priority shall be given to state and local agencies.

(3) Public customers shall only be able to purchase CNG fuel from the state site with an accepted credit card.

(4) Public customers will be limited to 25 GGE per vehicle per day unless otherwise authorized by the division.

(5) Violation of any term of operation may result in the revocation or suspension of a private individual or entity's authorization to purchase compressed natural gas from state sites.

R27-9-5. Abuse and Neglect of Fueling Equipment.

Damage to fuel equipment that results from the abuse or neglect by a public customer shall be the responsibility of that customer.

KEY: compressed natural gas, CNG, public fueling

March 26, 2012

63A-9-702(3)

Notice of Continuation September 23, 2016

R27. Administrative Services, Fleet Operations.**R27-10. Identification Mark for State Motor Vehicles.****R27-10-1. Authority.**

(1) Pursuant to Section 63A-9-401(5), the Department of Administrative Services is responsible for ensuring that state-owned vehicles for all departments, universities and colleges are marked as required by Section 41-1a-407. If "EX" license plates are required, the identification mark is also required, as described herein, for these agencies.

(2) Subsection 63A-9-601(1)(c) requires the Department of Administrative Services to enact rules relating to the size and design of the identification mark.

R27-10-2. Identification Mark.

(1) The identification mark shall be a likeness of the Great Seal of the State of Utah.

(a) Light/Heavy duty trucks, service vehicles and off-road equipment shall be clearly marked, on each front door, with an eight-inch seal. At the option of the entity operating the motor vehicle, the identification mark may include a banner not more than four inches high which may bear the entity's logo and such name of department or division. All identification markings must be approved by the Division of Fleet Operations prior to use.

(b) Non-law enforcement passenger vehicles shall be marked with a translucent identification sticker, four inches in diameter on the furthest rearward window in the lower most rearward corner, on each side of the of the vehicle.

(2) An identification mark shall be placed on both sides of the motor vehicle. The required portion of the identification mark (State Seal) shall be placed on in a visible location on each side of the vehicle.

(3) The requirement for the display of the identification mark is not intended to preclude other markings to identify special purpose vehicles.

(4) Vehicles used for law enforcement purposes may, at the discretion of the operating agency, display a likeness of the Great Seal of the State of Utah in the center of a gold star for identification purposes. Other emergency response vehicles are not precluded from displaying additional appropriate markings. At the option of the agency, this seal may be placed on the front door above any molding and, where practicable, below the window at least four inches. The optional banner portion of the identification mark shall be placed immediately below the State Seal portion.

(5) It is the intent of these rules that these identification marks clearly identify the vehicles as being the property of the State of Utah. Additional markings should be applied discriminately so as not to detract from that intent.

R27-10-3. License Plates.

(1) Every vehicle owned and operated or leased for the exclusive use of the state shall have placed on it a registration plate displaying the letters "EX."

(2) Plates issued to Utah Highway Patrol vehicles may bear the capital letters "UHP," a beehive logo, and the call number of the vehicle for which the plate is issued. In lieu of the identification mark herein described, the Utah Highway Patrol may use a substitute identification mark of its own specification.

R27-10-4. Exceptions.

(1) Neither the "EX" license plates nor the identification marks need be displayed on state-owned motor vehicles if:

(a) the motor vehicle is in the direct service of the Governor, Lieutenant Governor, Attorney General, State Auditor or State Treasurer of Utah;

(b) the motor vehicle is used in official investigative work where secrecy is essential;

(c) the motor vehicle is provided to an official as part of a compensation package allowing unlimited personal use of that vehicle; or

(d) the personal security of the occupants of the vehicle would be jeopardized if the identification mark were in place.

(2) State vehicles which meet the criteria described in Subsection R27-10-4(1) may be excused from these rules to display the identification mark and "EX" license plates. Exceptions shall be requested in writing from the Executive Director of the Department of Administrative Services and shall continue in force only so long as the use of the vehicle continues.

(3) Exceptions shall expire when vehicles are replaced. New exceptions shall be requested when new vehicles are placed in use.

(4) No motor vehicle required to display "EX" license plates shall be exempt from displaying the identification mark.

R27-10-5. Effective Date.

(1) All motor vehicles obtained or leased for use after the effective date of these rules shall display the prescribed identification mark.

(2) All passenger motor vehicles owned, leased for use or operated by the state, except as herein excepted, shall display an identification mark as required by these rules no later than two years following the effective date of this rule. Special purpose vehicles currently displaying markings other than as prescribed herein may retain such markings until the vehicle bearing them is disposed of.

KEY: motor vehicles**April 20, 2009****Notice of Continuation September 23, 2016****41-1a-407****63A-9-401****63A-9-601(1)©**

R58. Agriculture and Food, Animal Industry.**R58-18. Elk Farming.****R58-18-1. Authority.**

Regulations governing elk farming promulgated under authority of 4-39-106.

R58-18-2. Definitions.

In addition to the definitions found in Sections 4-1-8, 4-7-3, 4-24-2, 4-32-3 and 4-39-102, the following terms are defined for purposes of this rule:

(1) "Adjacent Herd" means a herd of Cervidae occupying premises that border an affected herd, including herds separated by fences, roads or streams, herds occupying a premises where Chronic Wasting Disease (CWD) was previously diagnosed, and herds that share the same license as the affected or source herd, even if separate records are maintained and no commingling has taken place.

(2) "Affected herd" means a herd of Cervidae where an animal has been diagnosed with Chronic Wasting Disease (CWD) caused by protease resistant prion protein (PrP), and confirmed by means of an approved test, within the previous 5 years.

(3) "Animal identification" means a device or means of animal identification.

(4) "Approved test" means approved tests for Chronic Wasting Disease CWD surveillance shall be those laboratory or diagnostic tests accepted nationally by USDA and approved by the State Veterinarian.

(5) "Commingled", "commingling" means that animals are commingled if they have direct contact with each other, have less than 10 feet of physical separation, or share equipment, pasture, or water sources/watershed. Animals are considered to have commingled if they have had such contact with a positive animal or contaminated premises within the last 5 years.

(6) "CWD-exposed animal" means an animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous 5 years.

(7) "CWD-exposed herd" means a herd in which a CWD-positive animal has resided within 5 years prior to that animal's diagnosis as CWD-positive.

(8) "CWD Herd Certification Program" means the Chronic Wasting Disease Herd Certification Program.

(9) "CWD-positive animal" means an animal that has had a diagnosis of CWD confirmed by means of an official CWD test.

(10) "CWD-positive herd" means a herd in which a CWD positive animal resided at the time it was diagnosed and which has not been released from quarantine.

(11) "CWD-suspect animal" means an animal for which has been determined that laboratory evidence or clinical signs suggest a diagnosis of CWD.

(12) "CWD-suspect herd" means a herd in which a CWD suspect animal resided and which has not been released from quarantine.

(13) "Destination Herd" means the intended herd of residence, which will be occupied by the animal which is proposed for importation.

(14) "Domestic elk" as used in this chapter, in addition to 4-39-102, means any elk which has been born inside of, and has spent its entire life within captivity.

(15) "Elk" as used in this chapter means North American Wapiti or Cervus Elaphus Canadensis.

(16) "Herd of Origin" means the herd, which an imported animal has resided in, or does reside in, prior to importation.

(17) "Official slaughter facility" means a place where the slaughter of livestock occurs that is under the authority of the state or federal government and receives state or federal inspection.

(18) "Quarantine Facility" means a confined area where selected elk can be secured, contained and isolated from all other elk and livestock.

(19) "Raised" as used in the act means any possession of domestic elk for any purpose other than hunting.

(20) "Secure Enclosure" means a perimeter fence or barrier that is so constructed as to prevent domestic elk from escaping into the wild or the ingress of native wildlife into the facility.

(21) "Separate location" as used in Subsection 4-39-203(5) means any facility that may be separated by two distinct perimeter fences, not more than 10 miles apart, owned by the same person.

(22) "Trace Back Herd/Source Herd" means a herd of Cervidae where an animal affected with CWD has formerly resided.

(23) "Trace Forward Herd" means a herd of Cervidae which has received exposed animals that originated from a CWD positive herd within 5 years prior to the diagnosis of CWD in the positive herd or from the identified date of entry of CWD into the positive herd.

R58-18-3. Application and Licensing Process.

(1) Each applicant for a license shall submit a signed, complete, accurate and legible application on a Department issued form.

(2) In addition to the application, a general plot plan should be submitted showing the location of the proposed farm in conjunction with roads, towns, etc. in the immediate area.

(3) A facility number shall be assigned to an elk farm at the time a completed application is received by the Department.

(4) A complete facility inspection and approval shall be conducted prior to the issuing of a license or entry of elk to any facility. This inspection shall be made by an approved Department of Agriculture and Food employee and Division of Wildlife Resources employee. It shall be the responsibility of the applicant to request this inspection at least 72 hours in advance.

(5) Upon receipt of an application, inspection and approval of the facility and completion of the facility approval form and receipt of the license fee, a license will be issued.

(6) All licenses expire on July 1st in the year following the year of issuance.

(7) Elk may enter into the facility only after a license is issued by the Department and received by the applicant.

R58-18-4. License Renewal.

(1) Each elk farm must make renewal application to the Department on the prescribed form no later than April 30th indicating its desire to continue as an elk farm. This application shall be accompanied by the required fee. Any license renewal application received after April 30th will have a late fee assessed.

(2) Any license received after July 1st is delinquent and any animals on the farm will be quarantined until due process of law against the current owner has occurred. This may result in revocation of the license, loss of the facility number, closure of the facility and or removal of the elk from the premises.

(3) Documentation showing that genetic purity has been maintained throughout the year is also required for annual license renewal.

(4) The licensee shall provide a copy of the inventory sheet to the inspector at the time of inspection.

(5) Prior to renewal of the license, the facility will again be inspected by a Utah Department of Agriculture and Food employee.

(a) The employee will document that all fencing and facility requirements are met as required.

(b) The employee will perform an inventory count on all elk on the premises.

(c) The employee will perform a visual general health check of all animals.

(d) Every year, the employee will perform an inventory of all elk by matching individual animal identification with the inventory records received from the owner/manager of the elk facility.

(e) The physical inventory and bookkeeping inventory must have at least a 95% match.

R58-18-5. Facilities.

(1) All perimeter fences and gates shall meet the minimum standard as defined in Section 4-39-201.

(a) The perimeter fences and gates shall be constructed to prevent the movement of cervids, both captive and wild, into or out of the facility.

(2) Internal handling facilities shall be capable of humanely restraining an individual animal for the applying or reading of any animal identification, the taking of blood or tissue samples, or conducting other required testing by an inspector or veterinarian.

(a) Any such restraint shall be properly constructed to protect inspection personnel while handling the animals.

(b) Minimum requirements include a working pen, an alley way and a restraining chute.

(3) The licensee shall provide an isolation or quarantine holding facility which is adequate to contain the animals and provide proper feed, water and other care necessary for the physical well being of the animal(s) for the period of time necessary to separate the animal from other animals on the farm.

(4) Each location of a licensed facility with separate perimeter fences must have its own separate loading facility.

R58-18-6. Records.

(1) Licensed elk farms shall maintain accurate and legible office records showing the inventory of all elk on the facility.

(2) The inventory record of each animal shall include:

(a) Name and address of agent(s) which the elk was purchased from,

(b) Identification number (tattoo or microchip) and official ear tag number,

(c) Age,

(d) Sex,

(e) Date of purchase or birth,

(f) Date of death or change of ownership (name of new owner and address should be recorded and retained), and

(g) Certificate of Veterinary Inspection if purchased out of state.

(3) The inventory sheet may be one that is either provided by the Department or may be a personal design of similar format.

(4) Any animal born on the property or transported into a facility must be added to the inventory sheet within seven days.

(5) Any elk purchased must be shown on the inventory sheet within 30 days after acquisition, including source.

(6) A death record of all elk 12 months of age and over that die; or that are otherwise harvested, slaughtered, killed, or destroyed shall be submitted to the Department within 48 hours after death of the animal.

R58-18-7. Genetic Purity.

(1) All elk entering Utah, except those going directly to slaughter, must have written evidence of genetic purity.

(2) Written evidence of genetic purity will include one of the following:

(a) Test charts from an approved lab that have run either a:

(i) Blood genetic purity test or

(ii) DNA genetic purity test.

(b) Registration papers from the North American Elk

Breeders Association.

(c) Herd purity certification papers issued by another state agency.

(3) Genetic purity records must be kept on file and presented to the inspector at the time elk are brought into the state and also each year during the license renewal process.

(4) Any elk identified as having red deer genetic influence shall be destroyed, or immediately removed from the state.

R58-18-8. Acquisition of or Slaughter of Elk.

(1) Only domesticated elk will be allowed to enter and be kept on any elk farm in Utah.

(2) All new elk brought into a facility shall be held in a quarantine facility until a livestock inspector has inspected the animal(s) to verify that all health, identification and genetic purity requirements have been met. New animals may not commingle with any elk already on the premises until this verification is completed by the livestock inspector.

(3) All elk presented for slaughter at an official slaughter facility, that have come from an out of state source, must arrive on a day when no Utah raised elk or elk carcasses are present at the plant.

(4) Individual elk identification must be maintained throughout slaughter and processing until such time that CWD test results have been returned from the laboratory.

(5) Out of state elk shall be tested for Brucellosis at the time of slaughter.

R58-18-9. Identification.

(1) All elk shall be permanently identified with either a tattoo or electronic identification tag.

(2) If the identification method chosen to use is the electronic identification tag, a reader must be made available, by the owner, to the inspector at the time of any inspection to verify electronic identification number. The electronic identification tag shall be placed in the right ear.

(3) If tattooing is the chosen method of identification, each elk shall bear a tattoo number consisting of the following:

(a) UT (indicating Utah) followed by a number assigned by the Department (indicating the facility number of the elk farm) and

(b) Any alphanumeric combination of letters or numbers consisting of not less than 3 digits, indicating the individual animal number herein referred to as the "ID number".

Example:

UTxxx

ID number (001)

(c) Each elk shall be tattooed on either the right peri-anal hairless area beside the tail or in the right ear.

(d) Each alphanumeric character must be at least 3/8 inch high.

(e) Each newly purchased elk will not need to be retattooed or microchipped if they already have this type of identification.

(f) Any purchased elk not already identified shall be tattooed or microchipped within 30 days after arriving on the farm.

(g) All calves must be tattooed or microchipped within 15 days after weaning or in no case later than September 15th or before leaving the premises where they were born.

(4) In addition to one of the two above mentioned identification methods, each elk shall be identified by an official USDA ear tag or other ear tag approved by the State Veterinarian within 15 days after weaning or in no case later than September 15th or before leaving the premises where they were born or within 30 days after arriving on the farm.

R58-18-10. Inspections.

(1) All facilities must be inspected within 60 days before

a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the Department for such inspection, giving the Department ample time to respond to such a request.

(2) All elk must be inspected for inventory purposes within 60 days before a license renewal can be issued.

(3) All elk must be inspected when any change of ownership, moving out of state, leaving the facility, slaughter or selling of elk products, such as antlers, occurs except as indicated in (f) below.

(a) It is the responsibility of the licensee to arrange for any inspection with the local state livestock inspector.

(b) A minimum of 48 hours advance notice shall be given to the inspector.

(c) When inspected, the licensee or his representative shall make available such records as will certify ownership, genetic purity, and animal health.

(d) All elk to be inspected shall be properly contained in facilities adequate to confine each individual animal for proper inspection.

(e) Animals shall be inspected before being loaded or moved outside the facility.

(f) Animals moving from one perimeter fence to another within the facility may move directly from one site to another site without a brand inspection, but must be accompanied with a copy of the facility license.

(4) Any elk purchased or brought into the facility from an out-of-state source shall be inspected upon arrival at a licensed farm before being released into an area inhabited by other elk. All requirements of R58-18-10(3) above shall apply to the inspection of such animals.

(5) A Utah Brand Inspection Certificate shall accompany any shipment of elk or elk products, including velveted antlers, which are to be moved from a Utah elk farm.

(a) Shed antlers are excluded from needing an inspection.

(6) Proof of ownership and proper health papers shall accompany all interstate movement of elk to a Utah destination.

(7) Proof of ownership may include:

(a) A brand inspection certificate issued by another state.

(b) A purchase invoice from a licensed public livestock market showing individual animal identification.

(c) Court orders.

(d) Registration papers showing individual animal identification.

(e) A duly executed bill (notarized) of sale.

R58-18-11. Health Rules.

(1) Prior to the importation of elk, whether by live animals, gametes, eggs, sperm or other genetic material into the State of Utah, the importing party must obtain an import permit from the Utah State Veterinarian's office.

(a) An import permit number shall be issued only if the destination is licensed as an elk farm by the Utah Department of Agriculture and Food or an official slaughter facility.

(b) The import permit number for Utah shall be obtained by the local veterinarian conducting the official health inspection by contacting the Utah Department of Agriculture and Food.

(2) All elk imported into Utah must be examined by an accredited veterinarian prior to importation and must be accompanied by a valid Certificate of Veterinary Inspection, health certificate, certifying a disease free status.

(a) Minimum specific disease testing results or health statements must be included on the Certificate of Veterinary Inspection. Minimum disease testing requirement may be waived on elk traveling directly to an official slaughter facility.

(b) A negative tuberculosis test must be completed within 60 days prior to entry into the state. A retest is also optional at the discretion of the State Veterinarian.

(c) If animals do not originate from a tuberculosis accredited, qualified or monitored herd, they may be imported only if accompanied by a certificate stating that such domestic cervidae have been classified negative to two official tuberculosis tests that were conducted not less than 90 days apart, that the second test was conducted within 60 days prior to the date of movement. The test eligible age is six months or older, or less than six months of age if not accompanied by a negative testing dam.

(d) All elk being imported shall test negative for brucellosis if six months of age or older, by at least two types of official USDA brucellosis tests.

(e) The Certificate of Veterinary Inspection must also include the following signed statement: "To the best of my knowledge the elk listed herein are not infected with Johne's Disease (Paratuberculosis), Chronic Wasting Disease or Malignant Catarrhal Fever and have never been east of the 100 degree meridian."

(f) The Certificate of Veterinary Inspection shall also contain the name and address of the shipper and receiver, the number, sex, age and any individual identification on each animal.

(3) Additional disease testing may be required at the discretion of the State Veterinarian prior to importation or when there is reason to believe other disease(s), or parasites are present, or that some other health concerns are present.

(4) Imported or existing elk may be required to be quarantined at an elk farm if the State Veterinarian determines the need for and the length of such a quarantine.

(5) Any movement of elk outside a licensed elk farm shall comply with standards as provided in the document entitled: "Uniform Methods and Rules (UM and R)", as approved and published by the USDA. The documents, entitled: "Tuberculosis Eradication in Cervidae, Uniform Methods and Rules", the May 15, 1994 edition, and "Brucellosis Eradication, Uniform Methods and Rules", the May 6, 1992 edition as published by the USDA, are hereby incorporated by reference into this rule. These are the standards for tuberculosis and brucellosis eradication in domestic cervidae.

(6) Treatment of all elk for internal and external parasites is required within 30 days prior to entry, except elk going directly to slaughter.

(7) All elk imported into Utah must originate from a state or province, which requires that all suspected or confirmed cases of Chronic Wasting Disease (CWD), be reported to the State Veterinarian or regulatory authority. The state or province of origin must have the authority to quarantine source herds and herds affected with or exposed to CWD.

(8) Based on the State Veterinarian's approval, all elk imported into Utah shall originate from states, which have implemented a Program for Surveillance, Control, and Eradication of CWD in Domestic Elk. All elk imported to Utah must originate from herds that have been participating in a verified CWD surveillance program for a minimum of 5 years. Animals will be accepted for movement only if epidemiology based on vertical and horizontal transmission is in place.

(9) No elk originating from a CWD affected herd, trace back herd/source herd, trace forward herd, adjacent herd, or from an area considered to be endemic to CWD, may be imported to Utah.

(10) Elk semen, eggs, or gametes, require a Certificate of Veterinary Inspection verifying the individual source animal has been tested for genetic purity for Rocky Mountain Elk genes and certifying that it has never resided on a premises where Chronic Wasting Disease has been identified or traced. An import permit obtained by the issuing veterinarian must be listed on the Certificate of Veterinary Inspection.

R58-18-12. Chronic Wasting Disease Surveillance and

Investigation.

(1) The owner, veterinarian, or inspector of any elk which is suspected or confirmed to be affected with Chronic Wasting Disease (CWD) in Utah is required to report that finding to the State Veterinarian.

(2) The State Veterinarian will promptly investigate all animals reported as CWD-exposed, CWD-suspect, or CWD-positive animals, including but not limited to:

(a) Conduct an epidemiologic investigation of CWD-positive, CWD-exposed, and CWD-suspect herds that includes the designation of suspect and exposed animals and that identifies animals to be traced;

(b) Conduct tracebacks of CWD-positive animals and traceouts of CWD-exposed animals and report any out-of-State traces to the appropriate State promptly after receipt of notification of a CWD-positive animal; and

(c) Conduct tracebacks based on slaughter or other sampling promptly after receipt of notification of a CWD-positive animal at slaughter.

(d) With the approval of the Commissioner of Agriculture, the State Veterinarian will place the facility under quarantine and any trace-back or trace-forward facility as needed.

(e) Any elk over 12 months of age that dies or is otherwise slaughtered or destroyed from a CWD-positive, CWD-exposed, and CWD-suspect herd shall have the brain stem (obex portion of the medulla) and medial retropharyngeal lymph nodes collected for testing for Chronic Wasting Disease (CWD) by an official test.

(i) The samples shall be collected by an accredited veterinarian, or an approved laboratory, or person trained and approved by the State Veterinarian.

(ii) Carcasses and tissues from these animals will be either incinerated or stored by a state or federally inspected slaughter establishment until testing is completed.

(iii) Carcasses and tissues from animals testing positive must be disposed of by incineration or other means approved by the State Veterinarian.

(3) Each elk farm, licensed in Utah, shall be required to submit the brain stem (obex portion of the medulla) and medial retropharyngeal lymph nodes of any elk over 12 months of age that dies or is otherwise slaughtered or destroyed, for testing for Chronic Wasting Disease (CWD) by an official test. The samples shall be collected by an accredited veterinarian, or an approved laboratory, or person trained and approved by the State Veterinarian. Farms owning 20 or more elk maybe allowed up to a 10% error rate on samples per year; farms owning less than 20 elk will not have an acceptable error rate.

(4) Each hunting park, licensed in Utah, shall be required to submit the brain stem (obex portion of the medulla) and medial retropharyngeal lymph nodes of all elk over 12 months of age that die; or that are otherwise harvested, slaughtered, killed, or destroyed, for testing for Chronic Wasting Disease with an official test. The samples shall be collected by an accredited veterinarian, approved laboratory, or person trained and approved by the State Veterinarian. Hunting parks maybe allowed up to a 10% error rate on samples per year with consideration taken when elk are shot in an area of the elk that causes an unacceptable sample.

(5) The CWD surveillance samples from elk residing on licensed elk farms and elk hunting parks shall be collected and preserved in formalin within 48 hours following the death of the animal, and submitted within 7 days, to a laboratory approved by the State Veterinarian. Training of approved personnel shall include collection, handling, shipping, and identification of specimens for submission.

(6) Laboratory fees and expenses incurred for collection and shipping of samples shall be the responsibility of the participating elk farm or hunting park.

(7) The designation and disposition of CWD exposed,

positive, or suspect animals or herds in Utah shall be determined by the State Veterinarian.

R58-18-13. Herd Status.

(1) Initial and subsequent status.

(a) When a herd is first enrolled in the CWD Herd Certification Program, it will be placed in First Year status, except that; if the herd is comprised solely of animals obtained from herds already enrolled in the Program, the newly enrolled herd will have the same status as the lowest status of any herd that provided animals for the new herd.

(b) If the herd continues to meet the requirements of the CWD Herd Certification Program, each year, on the anniversary of the enrollment date the herd status will be upgraded by 1 year; i.e., Second Year status, Third Year status, Fourth Year status, and Fifth Year status.

(c) One year from the date a herd is placed in Fifth Year status, the herd status will be changed to "Certified", and the herd will remain in "Certified" status as long as it is enrolled in the program, provided its status is not lost or suspended in accordance with this section.

(2) Loss or suspension of herd status.

(a) If a herd is designated a CWD-positive herd or a CWD-exposed herd, it will immediately lose its program status and may only reenroll after entering into a herd plan.

(b) If a herd is designated a CWD-suspect herd, a trace back herd, or a trace forward herd, it will immediately be placed in Suspended status pending an epidemiologic investigation.

(i) If the epidemiologic investigation determines that the herd was not commingled with a CWD-positive animal, the herd will be reinstated to its former program status, and the time spent in Suspended status will count toward its promotion to the next herd status level.

(ii) If the epidemiologic investigation determines that the herd was commingled with a CWD-positive animal, the herd will lose its program status and will be designated a CWD-exposed herd.

(iii) If the epidemiological investigation is unable to make a determination regarding the exposure of the herd, because the necessary animal or animals are no longer available for testing (i.e., a trace animal from a known positive herd died and was not tested) or for other reasons, the herd status will continue as Suspended unless and until a herd plan is developed for the herd.

(iv) If a herd plan is developed and implemented, the herd will be reinstated to its former program status, and the time spent in Suspended status will count toward its promotion to the next herd status level; Except that, if the epidemiological investigation finds that the owner of the herd has not fully complied with program requirements for animal identification, animal testing, and recordkeeping, the herd will be reinstated into the CWD Herd Certification Program at the First Year status level, with a new enrollment date set at the date the herd entered into Suspended status.

(v) Any herd reinstated after being placed in Suspended status must then comply with the requirements of the herd plan as well as the requirements of the CWD Herd Certification Program. The herd plan will require testing of all animals that die in the herd for any reason, regardless of the age of the animal, may require movement restrictions for animals in the herd based on epidemiologic evidence regarding the risk posed by the animals in question, and may include other requirements found necessary to control the risk of spreading CWD.

(c) If the Department determines that animals from a herd enrolled in the program have commingled with animals from a herd with a lower program status, the herd with the higher program status will be reduced to the status of the herd with which its animals commingled.

(3) Cancellation of enrollment by the Department.

(a) The Department may cancel the enrollment of an enrolled herd by giving written notice to the herd owner.

(b) In the event of such cancellation, the herd owner may not reapply to enroll in the CWD Herd Certification Program for 5 years from the effective date of the cancellation.

(c) The Department may cancel enrollment after determining that the herd owner failed to comply with any requirements of this section. Before enrollment is canceled, the Department will inform the herd owner of the reasons for the proposed cancellation.

(d) Herd owners may appeal cancellation of enrollment or loss or suspension of herd status by writing to the Commissioner of Agriculture within 10 days after being informed of the reasons for the proposed action.

(i) The appeal must include all of the facts and reasons upon which the herd owner relies to show that the reasons for the proposed action are incorrect or do not support the action.

(ii) The Commissioner of Agriculture will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision.

(iii) If there is a conflict as to any material fact, a hearing will be held to resolve the conflict.

(iv) The cancellation of enrollment or loss or suspension of herd status shall become effective pending final determination in the proceeding if the Commissioner of Agriculture determines that such action is necessary to prevent the possible spread of CWD.

(A) Such action shall become effective upon oral or written notification, whichever is earlier, to the herd owner.

(B) In the event of oral notification, written confirmation shall be given as promptly as circumstances allow.

(v) This cancellation of enrollment or loss or suspension of herd status shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Commissioner of Agriculture.

(4) Herd status of animals added to herds.

(a) A herd may add animals from herds with the same or a higher herd status in the CWD Herd Certification Program with no negative impact on the certification status of the receiving herd.

(b) If animals are acquired from a herd with a lower herd status, the receiving herd reverts to the program status of the sending herd.

(c) If a herd participating in the CWD Herd Certification Program acquires animals from a nonparticipating herd, the receiving herd reverts to First Year status with a new enrollment date of the date of acquisition of the animal.

R58-18-14. Herd Plan.

(1) A written herd plan will be developed by the State Veterinarian with input from the herd owner, USDA, and other affected parties.

(2) The herd plan sets out the steps to be taken to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CWD-exposed or CWD-suspect herd, or to prevent introduction of CWD into another herd.

(3) A herd plan will require:

(a) specified means of identification for each animal in the herd;

(b) regular examination of animals in the herd by a veterinarian for signs of disease;

(c) reporting to a State or USDA representative of any signs of central nervous system disease in herd animals;

(d) maintaining records of the acquisition and disposition of all animals entering or leaving the herd, including the date of acquisition or removal, name and address of the person from whom the animal was acquired or to whom it was disposed, cause of death, if the animal died while in the herd.

(4) A herd plan may also contain additional requirements

to prevent or control the possible spread of CWD, depending on the particular condition of the herd and its premises, including but not limited to:

(a) specifying the time for which a premises must not contain cervids after CWD positive, exposed, or suspect animals are removed from the premises;

(b) fencing requirements;

(c) depopulation or selective culling of animals;

(d) restrictions on sharing and movement of possibly contaminated livestock equipment;

(e) cleaning and disinfection requirements, or other requirements.

(5) The State Veterinarian must approve all movement of cervids onto or off of the facility.

(a) Movement restriction of cervids will remain in place until requirements of the plan have been met.

(6) The State Veterinarian may review and revise a herd plan at any time in response to changes in the situation of the herd or premises or improvements in understanding of the nature of CWD epidemiology or techniques to prevent its spread.

R58-18-15. Grounds for Denial, Suspension, or Revocation of Licenses for Domestic Elk Facilities.

(1) A license to operate a domestic elk facility may be denied, suspended, or revoked by the Department for any of the following reasons:

(a) Incomplete application or incorrect application information;

(b) Incorrect records or failure to maintain required records;

(c) Not presenting animals for identification at the request of the Department;

(d) Failure to notify Department of movement of elk onto or off of the facility;

(e) Failure to identify elk as required;

(f) Movement of imported elk onto facility without obtaining a Certificate of Veterinary Inspection which has an import permit number obtained from the Department;

(g) Importing animals that are prohibited or controlled as listed in rule R657-3;

(h) Failure to notify the Department concerning an escape of an animal from a domestic elk facility;

(g) Failure to maintain a perimeter fence that prevents escape of domestic elk or ingress of wild cervids into the facility;

(i) Failure to notify the Division of Wildlife Resources that there are wild cervids inside a domestic elk farm or hunting park;

(j) Failure to participate with the Utah Department of Agriculture and Food and the Utah Division of Wildlife Resources in a cooperative wild cervid removal program;

(k) Failure to have inventories match with at least a 95% match;

(l) Failure to submit the acceptable rate of CWD test samples;

(m) Failure to have the minimum proper equipment necessary to safely and humanely handle animals in the facility; or

(l) Inhumane handling or neglect of animals on the facility as determined by the Department.

(2) Once the Department has notified the operator of a domestic elk facility of the denial, suspension, or revocation of a license to operate a domestic elk facility, the operator has 15 calendar days to request an appeal with the Commissioner of Agriculture.

(3) An operator of a domestic elk facility that has had their license revoked shall remove all elk from the facility within 30 calendar days by:

- (a) Sending all elk to an inspected facility for slaughter; or
- (b) Selling elk to another facility;
- (4) Any elk remaining on the facility at the end of 30 days will be sold by the Department during a special sale conducted for that purpose.

KEY: chronic wasting disease, elk, inspections
September 19, 2016
Notice of Continuation January 18, 2012

4-39-106

R58. Agriculture and Food, Animal Industry.**R58-20. Domesticated Elk Hunting Parks.****R58-20-1. Authority and Purpose.**

In accordance with the Domesticated Elk Act, and the provisions of Section 4-39-106, Utah Code, this rule specifies:

- (i) procedures for obtaining domesticated elk facility licenses,
- (ii) requirements for operating those facilities,
- (iii) standards for disposal/removal of animals within those facilities, and
- (iv) health standards and requirements in such facilities.

R58-20-2. Definitions.

In addition to terms used in Section 4-39-102, and R58-18-2:

- (1) "Division" means the Division of Animal Industry, in the Utah Department of Agriculture and Food.
- (2) "Domestic elk" means any elk which is born inside of, and has spent its entire life in captivity, and is the offspring of domestic elk.
- (3) "Elk farm" means a place where domestic elk are raised, bred and sold within the practice of normal or typical ranching operations.
- (4) "Hunting Park" means a place where domestic elk are harvested through normal or typical hunting methods.
- (5) "Isolation Facility" means a confined area where selected elk can be secured, contained and isolated from all other elk or livestock.
- (6) "Secure Enclosure" means a perimeter fence or barrier that is constructed and maintained in accordance with Section 4-39-201 and will prevent domestic elk from escaping into the wild or the ingress of big game wildlife into the facility.

R58-20-3. Application and Licensing Process.

- (1) Pursuant to Section 4-39-203, Utah Code, the owner of each facility that is involved in the hunting of domestic elk must first fill out and complete a separate elk hunting park application which shall be submitted to the Division for approval.
- (2) In addition to the application, a general plot plan should be submitted showing the location of the proposed hunting park in conjunction with roads, town, etc. in the immediate area.
- (3) A facility number shall be assigned to an elk hunting park at the time a completed application is received at the Department of Agriculture and Food building.
- (4) A complete facility inspection and approval shall be conducted prior to the issuing of a license or entry of elk to any facility. This inspection shall be made by an approved Department of Agriculture and Food employee and Division of Wildlife Resources employee. It shall be the responsibility of the applicant to request this inspection at least 72 hours in advance.
- (5) Upon receipt of an application, inspection and approval of the facility, completion of the facility approval form, and receipt of the license fee, a license will be issued.
- (6) All licenses for hunting parks expire on July 1 in the year following the year of issuance.
- (7) No domestic elk shall be allowed to enter a hunting park until a license is issued by the division and received by the applicant.

R58-20-4. License Renewal.

- (1) All laws found in Section 4-39-205 and rules found in R58-18-4 pursuant to the renewal of elk farms are applicable to elk hunting parks.

R58-20-5. Facilities.

- (1) Fencing requirements established by Section 4-39-201

of the Utah Code are applicable to both domestic elk farms and hunting parks.

(2) A hunting park for domesticated elk may be no smaller than 600 fenced contiguous acres, with sufficient trees, rocks, hills and natural habitat, etc. to provide cover for the animals. Hunting park owners intending to operate facilities larger than 5,000 acres must obtain prior written approval of the Elk Advisory Council, following studies, reviews or assessments, etc., which the Council may deem necessary to undertake, in order to make an informed decision.

(3) There shall be notices posted on the outside fence and spaced a minimum of every 100 yards, to notify the public that the land area is a private hunting park.

(4) Each location of a licensed facility with separate perimeter fences must have its own separate loading facility.

(5) To be licensed, the park must include a handling and isolation facility which can be accessed and operated with reasonable ease for identification and disease control purposes. An exception to this rule may be granted in cases where there is a licensed farm owned by the same individual within 50 miles of the hunting park which can be accessed in a reasonably short period of time.

R58-20-6. Records.

- (1) All laws and rules set forth in Sections 4-39-206 and R58-18-6 apply to hunting parks.

R58-20-7. Genetic Purity.

- (1) All laws and rules found in Sections 4-39-301 and R58-18-7 pursuant to genetic purity are applicable to hunting parks.

R58-20-8. Acquisition of Elk.

- (1) All laws and rules found in Sections 4-39-302, 4-39-303, R58-18-8 and R58-18-11 pursuant to importation or acquisition of domestic elk are applicable to hunting parks.

R58-20-9. Identification.

- (1) All laws and regulations provided in Sections 4-39-304 and R58-18-9 governing individual animal identification are applicable in hunting parks.

R58-20-10. Inspections.

- (1) All hunting park facilities must be inspected yearly within 60 days before a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the department for such inspection, giving the department ample time to respond to such a request.
- (2) All elk must be inspected for inventory purposes within a reasonable timely period before a license renewal can be issued.
 - (a) All elk must be removed from hunting grounds by harvest or recapture by December 31 of each year to ensure conclusive inventory.
- (3) All live domestic elk must be brand inspected prior to entering or leaving the park.
- (4) Any elk purchased or brought into the facility from an out-of-state source shall be inspected upon arrival at a licensed hunting park before being released into an area inhabited by other domestic elk.
- (5) A Utah Brand Inspection Certificate shall accompany any shipment of live elk into or out of the hunting park including those which move from facility to facility within Utah.
- (6) A Domestic Elk Harvest Permit must be filled out by the park owner at the time of harvest. One copy of the permit shall be sent to the division office, one copy shall go to the hunter and one copy shall be kept on file at the facility. Validated tags must be attached to the carcass and the antlers

prior to leaving the park and remain affixed during transportation to residence, meat processor, taxidermist, etc.

(7) Pursuant to Section 4-39-207, agricultural inspectors may, at any reasonable time during regular business hours, have free and unimpeded access to inspect all facilities, animals and records where domestic elk are kept.

R58-20-11. Health Rules.

(1) All laws and rules found in Sections 4-39-107, R58-18-11 and R58-18-12 pursuant to animal health are applicable to hunting parks.

R58-20-12. Meat.

(1) The selling of domestic elk meat obtained from a licensed hunting park will not be allowed and:

(a) Must be consumed by either the hunter or park owner or their immediate family members, regular employees or guests, or the meat shall be:

(b) Donated as a charitable food item in compliance with Section 4-34-2 of the Utah Agriculture Code.

R58-20-13. Dissolution of an Elk Hunting Park.

(1) Before an elk hunting park can be dissolved all elk must be removed from the premises.

(2) Any abandoned elk will be removed by the Utah Department of Agriculture and Food using lethal means.

(a) Carcasses will be disposed of by either disposal in an approved landfill, incineration, or donated as a charitable food item in compliance with Section 4-34-2 of the Utah Agriculture Code.

(b) Costs for removal of abandoned elk will be charged to the owner of the elk hunting park.

R58-20-14. Liability.

(1) All laws found in Section 4-39-401 concerning the escape of domesticated elk are applicable to hunting parks.

(2) A hunting park owner shall remove all wild big game animals prior to enclosing the park. If wild big game animals are found within the park after it has been licensed, the owner shall notify the Division of Wildlife Resources within 48 hours. A cooperative removal program may be designed by the parties involved to remove the animals.

(3) No person(s) may hunt domestic elk in an approved park without first being issued written permission to do so from the owner. The approval document shall be in the hunter's possession during hunting times. Hunting hours will be from 1/2 hour before sunrise to 1/2 hour after sunset.

(4) In accordance with the state's governmental immunity act, as found in Section 63G-7-101, et seq., the granting of a hunting park license or the imposing of a requirement to gain an owner's permission does not attach any liability to the state for any accident, mishap or injury that occurs on, adjacent to, or in connection with the hunting park.

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4-39-106

R81. Alcoholic Beverage Control, Administration.**R81-4F. Reception Center Licenses.****R81-4F-1. Licensing.**

(1) Effective November 1, 2011, before a person may store, sell, offer for sale, or furnish an alcoholic product on its premises as a reception center, the person shall first obtain a reception center license from the commission pursuant to 32B-6-803.

(2) A reception center license is issued to a person 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 Section 32B-5-310.

R81-4F-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a reception center 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-6-804 (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 reception center license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the reception center 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 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.

R81-4F-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-804(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.

R81-4F-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.

R81-4F-5. Reception Center Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a reception center 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.

R81-4F-6. Reception Center Liquor Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-805(8). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4F-7. Sale and Purchase of Alcoholic Beverages.

(1) The reception center licensee may not maintain in excess of 30% of its total annual receipts from the sale of an alcoholic product which includes mix for an alcoholic product, or a charge in connection with the furnishing of an alcoholic product pursuant to 32B-6-805(9).

(2) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, service charges, and all other sales. These records shall be reported to the department on an annual basis as part of the application for renewal of the reception center license. Additionally, these records should be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(3) If any inspection or audit discloses that the sales of alcoholic products exceed 30% of the reception center licensee's total receipts for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's alcohol 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 alcohol do not exceed 30% of the business. Failure of the licensee to provide satisfactory proof of the required alcohol 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.

(4) Liquor dispensing shall be in accordance with Section

32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems).

R81-4F-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 reception center as approved by the department.

R81-4F-9. Alcoholic Product Flavoring.

Reception center 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 reception center 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 reception center employee under the age of 21 years may handle alcoholic product flavorings.

R81-4F-10. Table Service.

(1) Alcoholic products may not be sold, offered for sale, or furnished to a patron, and a patron may not consume an alcoholic product at a bar structure. Alcoholic products may be dispensed from a mobile serving area that is moved only by staff of the reception center licensee, is capable of being moved by only one individual, and is no larger than 6 feet long and 30 inches wide. Otherwise, alcoholic products must be dispensed from an area that is separated from an area for the consumption of food by a patron by a solid, translucent or opaque, permanent structural barrier in accordance with 32B-6-805(15).

(2) A wine service may be performed by the server at the patron's table. The wine may be opened and poured by the server.

(3) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table.

(4) A patron's table may be located in waiting, patio, garden and dining areas previously approved by the department.

R81-4F-11. 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.

R81-4F-12. Reporting Requirement.

(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, and pursuant to 32B-6-805(3).

(2) Purpose. This rule implements the requirement of 32B-6-805(3) that requires the commission to provide by rule procedures for reception center licensees to report scheduled events to the department to allow random inspections of events by authorized representatives of the commission, the department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) A reception center licensee licensed under 32B-6-801

shall file with the department at the beginning of each quarter a report containing advance notice of events that have been scheduled as of the reporting date for that quarter.

(b) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each scheduled event.

(d) The department shall make copies of the reports available to a commissioner, authorized representative of the department, and any law enforcement officer upon request to be used for the purpose stated in Section (2).

(e) The department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee submitting the information, and the licensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to 63G-2-305 and -309;

(ii) any report filed shall be classified by the department as protected pursuant to 63G-2-305; and

(iii) any report filed shall be used by the department and law enforcement only for the purposes stated in this rule.

(g) Failure of a reception center licensee to timely file the quarterly reports may result in disciplinary action pursuant to 32B-3-201 to -207, and R81-1-6 and -7.

R81-4F-13. Agreement For Alcoholic Beverage Service.

(1) "Third Party Host" is a party that contracts with the reception center licensee to provide alcoholic beverage service at an event to be held on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(a) With the exception of a nonprofit organization holding an event as described in 32B-6-805(19)(a), the reception center licensee may not contract with a third party host to hold an event that is open to the public where an alcoholic product is sold or offered for sale.

(b) With the exception of a nonprofit organization holding an event as described in 32B-6-805(19)(a), a third party host may not collect a cover charge or entry fee for admission to the private event.

(c) With the exception of a nonprofit organization holding an event as described in 32B-6-805(19)(a), a third party host may not receive any proceeds from the sale of alcoholic product from the event.

(d) A Reception Center Licensee may host an event for an immediate family member provided that the event is not an event that is open to the public where an alcoholic product is sold or offered for sale, and the Reception Center Licensee does not collect a cover charge or entry fee to the event.

KEY: alcoholic beverages, reception center licenses

April 30, 2013

32-1-607

Notice of Continuation September 28, 2016

32B-2-202

32B-5

32B-6-801 through 805

R81. Alcoholic Beverage Control, Administration.**R81-10C. Beer-Only Restaurant Licenses.****R81-10C-1. Licensing.**

(1) Beer-only restaurant licenses are issued to persons as defined in Section 32B-1-102(74). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32B-5-310.

R81-10C-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a beer only 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-6-904 (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 beer-only restaurant license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the beer-only 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.

R81-10C-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-904(4) may be withdrawn during the time the license is in effect. If the beer-only restaurant 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.

R81-10C-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.

R81-10C-5. 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.

R81-10C-6. Sale and Purchase of Beer.

(1) 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-6-905(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-6-905(7).

(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer 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) Beer dispensing shall be in accordance with Section 32B-5-304(5) and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-10C-7. Alcoholic Product Flavoring.

Beer Only Restaurant licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) 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.

R81-10C-8. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) Beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

R81-10C-9. 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.

R81-10C-10. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32B-6-902 which provides that:

(i) a bar structure, as defined in 32B-1-102(7), located in an establishment licensed as an on-premise beer retailer and operational as of August 1, 2011, may be "grandfathered" to

allow beer 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;

(b) This rule is also pursuant to 32B-6-902 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) "remodels the grandfathered bar structure" for purposes of 32B-6-902(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

November 26, 2013

32B-2-202

Notice of Continuation September 28, 2016

32B-5

32B-6-901 through 905

R81. Alcoholic Beverage Control, Administration.**R81-10D. Tavern Beer Licenses.****R81-10D-1. Licensing.**

(1) Tavern beer licenses are issued to persons as defined in Section 32B-1-102(74). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32B-5-310.

R81-10D-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a tavern 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-6-703 and -705 (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 tavern beer license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability insurance and liquor liability insurance if the tavern sells more than \$5000 of beer annually); and

(b) the department has inspected the tavern 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.

R81-10D-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-705(4) may be withdrawn during the time the license is in effect. If the tavern beer 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.

R81-10D-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.

R81-10D-5. 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.

R81-10D-6. Age Verification - Taverns.

(1) Authority. 32B-1-402, -405, and -407.

(2) Purpose.

(a) 32B-1-407 requires tavern 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 tavern 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 symbol 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 Section 32B-5-

301;

(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

April 30, 2013

32-1-607

Notice of Continuation September 28, 2016

32B-2-202

32B-5

32B-6-701 through 708

R105. Attorney General, Administration.

R105-2. Records Access and Management.

R105-2-1. Purpose.

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

R105-2-2. Requests for Access.

All requests for records shall be directed to:

TABLE

(If by hand delivery)

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

(If by mail)

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

(If by email)

GRAMA Coordinator
grama_coordinator@utah.gov

R105-2-3. Appeals.

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

TABLE

(If by hand delivery)

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

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

(If by email)

GRAMA Coordinator
grama_coordinator@utah.gov

R105-2-4. Records of Client Agencies.

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

R105-2-5. Record Sharing.

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

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

October 25, 2011 **63-2-204**
Notice of Continuation September 28, 2016 **63-2-904**

**R131. Capitol Preservation Board (State), Administration.
R131-10. Commercial Solicitations.**

Notice of Continuation September 20, 2016

R131-10-1. Purpose and Authority; Free Speech Solicitation Allowed.

(1) The purpose of this rule is to define and implement Board policy regarding commercial solicitation activities at the Utah State Capitol Hill Complex.

(2) In general, commercial solicitation is prohibited.

(3) Nothing in this rule shall be interpreted as to infringe upon anyone's constitutional right of freedom of expression and freedom of association in the Utah State Capitol Hill Complex.

(4) This rule is promulgated pursuant to Section 63C-9-301, Utah Code.

R131-10-2. Definitions.

(1) The definitions of rule R131-2-3 shall apply.

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

(a) "Commercial Solicitation" for the purpose of this rule does not include free speech activities as defined in rule R131-11, Utah Administrative Code.

(b) "Commercial Solicitation" for the purpose of this rule does not include filming or photographic activities, but such activities shall be subject to rule R131-2 et seq.

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

R131-10-3. Commercial Solicitation Allowed under a Facility Use Permit.

(1) Commercial solicitation, not prohibited by R131-10-4, may be allowed in conjunction with the issuance of a facility use permit under rule R131-2 and such commercial solicitation must comply with the facility use rules of R131-2 et seq.

(2) All materials allowed shall be displayed only on bulletin boards or in areas that have been approved in advance by the executive director.

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

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

R131-10-4. Prohibited Commercial Solicitation.

(1) The following commercial solicitation activities are prohibited on the Capitol Hill Complex and no facility use permit shall be issued for such:

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

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

(c) Any sale of food or beverage products except by an entity under contract with the Board. Any sale of other products may only occur as allowed under a contract with the Board or as an integral part of Board/governmental business on the Capitol Hill Complex.

**KEY: commercial solicitations, leafleting, posting notices
December 13, 2006 63C-9-301**

R131. Capitol Preservation Board (State), Administration.**R131-11. Preservation of Free Speech Activities.****R131-11-1. Purpose.**

(1) The purpose of this rule is to:

(a) promote and encourage free speech on the Capitol Hill Complex;

(b) preserve the right of every person to exercise free speech and freedom of assembly as protected by the constitutions of the state of Utah and the United States, within the Capitol Hill Complex subject to lawful time, place and manner rules regarding free speech activities necessary to protect the public health, safety and welfare, including safety and security considerations, the rights of others to exercise free speech and freedom of assembly, and minimizing the disruption to governmental business;

(c) facilitate public assembly and communication between people at the Capitol Hill Complex;

(d) designate areas under the Capitol Preservation Board's (Board) control, including those areas delegated from the Legislative Management Committee of the Capitol Hill Complex for free speech activities as specified in this rule that are necessary to protect the public health, safety and welfare, including safety and security considerations, the rights of others to exercise free speech and freedom of assembly, and minimizing the disruption to governmental business; and

(e) establish guidelines to promote and encourage free speech activities and public assembly on the Capitol Hill Complex.

(2) This rule is intended to further the following governmental interests:

(a) to promote and encourage free speech activities on the Capitol Hill Complex;

(b) to provide for lawful time, place and manner rules regarding free speech activities necessary to protect the public health, safety and welfare;

(c) to provide safety and security of the person(s);

(d) to minimize disruption to or interruption of the conduct of state business;

(e) to maintain unobstructed and efficient flow of pedestrian and vehicular traffic between and within the Capitol Hill Complex in order to provide safety and security of persons, emergency vehicle access, and assure accessibility to public services;

(f) to provide all persons their guaranteed right of free speech and freedom of assembly without harm or interruption;

(g) to inform persons of their responsibilities regarding littering, damage to, and vandalism of the Capitol Hill Complex; and

(h) to ensure the health, safety, and welfare of all persons visiting or using the Capitol Hill Complex.

R131-11-2. Authority.

(1) This rule is adopted pursuant to the authority granted to the Board under Section 63C-9-301. The executive director may adopt policies and procedures to implement this rule.

R131-11-3. Definitions.

The definitions of rule R131-2-3 shall apply to this rule R131-11. In addition, the following definitions shall apply for purposes of this rule:

(1) "Free Speech" and "Freedom of Assembly" means the exercise of free speech and freedom of assembly as protected by the constitutions of the state of Utah and the United States.

(2) "Free Speech Activity" or "Free Speech Activities" means the use of an area of the Capitol Hill Complex for a demonstration, rally, leafleting, press conference, vigil, march or parade that is available for such activity under this rule, by one or more persons for constitutionally protected free speech or assembly.

(a) "Advanced Planned Free Speech Activity" means a free speech activity that can be reasonably scheduled in advance of its occurrence, such that the executive director may lawfully require compliance with certain requirements as specified in this rule.

(b) "Short-Notice Free Speech Activity" means a free speech activity that arises out of, or is related to events or other public issued which cannot be reasonably anticipated far enough in advance of the occurrence to reasonably allow compliance with the requirements for an advanced planned free speech activity.

(3) "Demonstration" means the assembly of a group of individuals that join together to express a point of view openly.

(4) "Rally" means to hold an open gathering of a group of individuals of similar purpose to join together to express a point of view openly.

(5) "Leafleting" means the continuous unsolicited distribution of leaflets, buttons, handbills, pamphlets, flyers or any other written or similar materials indiscriminately to pedestrians or passers by.

(6) "Press Conference" is an organized formal assembly called by an individual or group to announce or express a point of view to the public utilizing the press and other media.

(7) "Vigil" means an assembly of an individual or individuals who come together to demonstrate their solidarity by an occasion or devotional watching or observance.

(8) "March" or "Parade" means the organized assembly of individuals who are celebrating or expressing a point of view while moving from one location to another.

(9) "Public Areas" are all areas on the Capitol Hill Complex which are open to the public.

R131-11-4. Free Speech and Freedom of Assembly; In General.

(1) Unless specifically regulated by this rule as to time, place or manner, all free speech and freedom of assembly may occur in all areas of the Capitol Hill Complex in any lawful form or manner as guaranteed by the constitutions of the state of Utah and the United States.

R131-11-5. Time, Place, and Manner of Free Speech Activities.

(1) Free Speech and Assembly Promoted and Encouraged. Free speech and freedom of assembly, as protected by the constitutions of the state of Utah and United States, is promoted and encouraged throughout the Capitol Hill Complex. Free speech activities, as specifically defined in this rule, are subject to lawful time, place and manner rules regarding free speech activities necessary to protect the public health, safety and welfare, including safety and security considerations, the rights of others to exercise free speech and freedom of assembly, and minimizing the disruption to governmental business.

(2) Subject to Capitol Hill Complex Facility Use Rule, Exception. Free speech activities shall be subject to R131-2-6, except that, in the case of conflict, the provisions of this rule R131-11 shall control.

(3) Time.

(a) Free speech activities held outdoors may take place 24 hours a day subject to duration requirements specified in this rule.

(b) Free speech activities held indoors may take place during the hours such public areas are open to the public, generally between 8:00 a.m. to 8:00 p.m., during after hour legislative sessions, and during committee and agency meetings until such sessions or meetings are adjourned.

(c) In order to accommodate as many groups as may make requests to conduct free speech activities on a given day, a free speech activity in a specified public area may be limited to two hours when necessary to accommodate another pre-scheduled

group in the same public free speech area. The time of a free speech activity in a specified public area may be shortened to two hours in duration if necessary to accommodate another group in the same public area that has qualified for a short notice free speech activity.

(4) Place.

(a) Health, safety and welfare restricted areas that may not be reserved for a free speech activity are the vehicular traveled portions of roads, roadways or parking lots, areas directly in front of or adjacent to parking garages' entrances or exits, paths of egress or access to emergency stairs and emergency egress hallways, areas under construction which are hazardous to non-construction workers, and those specific portions of the Capitol Hill Complex that contain storage, utilities and technology servicing the Capitol Hill Complex or other areas, which either must be available for prompt repair, are not open for public use or represent a danger to members of the public.

(b) In order to protect the public health, safety and welfare and allow for public accessibility to and the conduct of state business, a demonstration, rally, and vigil that does not use any candles, is allowed in the following locations:

(i) Capitol Hill grounds - However, candles with a wax collection container may be used for a vigil;

(ii) south grand staircase of the Capitol;

(iii) south, east and west terraces of the Capitol;

(iv) the Capitol rotunda;

(v) the plaza between the House and Senate Buildings - However, candles with a wax collection container may be used on the lawn and gravel areas only.

(vi) the main public foyer of the Senate Building;

(vii) the State Office Building auditorium; and

(viii) the main public foyer of the House Building.

(c) In order to protect the public health, safety and welfare and allow for public accessibility to and the conduct of state business, a demonstration, rally, and vigil where candles are used, parade and march are allowed in the following locations:

(i) Capitol Hill grounds;

(ii) the plaza between the House and Senate Buildings - However, the plaza shall only be used for the beginning or the end of a parade or march, and candles will not be permitted on the plaza except on the lawn and gravel areas and with a wax collection container.

(d) Notwithstanding any other provision of this rule, there is no registration requirement for free speech leafleting. In order to protect the public, health, safety and welfare and allow for public accessibility to and the conduct of state business, free speech activity leafleting, as defined in this rule, is allowed on the Capitol Hill Complex in the areas open to the public, without interference from capitol security, provided that it is done in a nonaggressive manner and does not prevent other individuals from passing along sidewalks and through doorways. The state is allowed to enforce any and all applicable statutes and ordinances regarding blocking public sidewalks, blocking hallways, disorderly conduct, blocking entrances to public buildings, garage entries, assault, battery and the like consistent with the requirements of the constitutions of the state of Utah and the United States. Leafleting is not allowed by placing leaflets on vehicles on the Capitol Hill Complex.

(5) Manner.

(a) Registration and Scheduling.

(i) All free speech activities shall comply with the following requirements, except that leafleting shall not be subject to any registration requirements.

(ii) An advanced planned free speech activity shall register as soon as reasonably possible, but not less than seven (7) days in advance of the free speech activity by registering with the executive director's office or online at <http://www.utahstatecapitol.utah.gov>.

(iii) Persons registering will provide the following

information: the name of the sponsoring organization; the name and contact information of a contact person or agent; the type of free speech activity; the date, time and duration of the free speech activity; the public area requested for use; the number of anticipated participants; and a list of equipment and services to be used in connection with the free speech activity. Registration shall be on a form prepared by the executive director.

(iv) If a person or group fails to register due to a short-notice free speech activity, they may still conduct the free speech activity provided it does not create a problem of public safety or interfere with the time and location of a previously scheduled free speech activity in the same public area and meets all the other requirements of this rule. In the case of such problem of public safety or interference, the executive director will coordinate with the applicant in reasonable efforts to find an alternative reasonable time or location.

(b) Priority.

(i) The scheduling assignment of public areas shall be made on a first-come, first-serve basis.

(ii) In the case of scheduling conflicts, first priority in the use of the public areas shall be given to government business and/or state sponsored activities where the authorized governmental official is reserving the public area for an expressed governmental or state need. Free speech activities shall be given priority over community service, commercial and private activities. In the case of such problem of public safety or interference, the executive director will coordinate with the applicant in reasonable efforts to find an alternative reasonable time or location.

(iii) No group or individual will be denied access to or use of a public area unless the proposed free speech activity violates this rule, applicable law, conflicts with a scheduled state sponsored activity, or conflicts with the time and location of a previously scheduled free speech activity.

(c) Consistent with the protections of the Utah and United States constitutions in order to preserve the free speech rights of others, outbursts or similar actions which disrupts or is likely to disrupt any government meeting or proceeding, is prohibited.

UR131-11-6. Expedited Appeals - Free Speech Activities.

(1) Claims eligible for expedited appeal. The following determinations of claims regarding a free speech activity may be appealed as provided below:

(a) A determination by the executive director that a proposed event or activity is a commercially related special event and not exempted as a free speech activity;

(b) A claim by an applicant that the executive director's denial, or condition of approval, of a proposed route, time or location for a free speech activity constitutes a violation of this rule or an unlawful time, place or manner restriction; or

(c) Any other claim by an applicant that any action by the state regarding the proposed free speech activity impermissibly burdens constitutionally protected rights of the applicant, sponsor, participants or spectators.

(2) Process for Expedited Appeal:

(a) The Board acknowledges an obligation to process appeals regarding a free speech activity promptly so as to not unreasonably inhibit or unlawfully burden constitutionally protected activities. Any time limit stated below may be lengthened if agreed to by the appellant and the executive director.

(i) As soon as reasonably possible, but no later than two working days after receipt of a completed registration, the executive director shall issue a determination, which may include lawful conditions, or notice of denial of the registration application.

(b) The executive director may deny the requested activity if:

(i) the requested activity does not comply with the

applicable rules;

(ii) the registrant attempts to register a free speech activity, but the executive director determines that it is a commercial activity;

(iii) the event would disrupt, conflict or interfere with a state sponsored activity, a time or place reserved for another free speech activity, the operation of state business, and such determination is in accordance with applicable constitutional provisions; and/or

(iv) the event poses a safety or security risk to persons or property and such determination is in accordance with applicable constitutional provisions.

(c) The executive director may place conditions on the approval that alleviates such concerns and such conditions are in accordance with this rule and applicable constitutional provisions.

(d)(i) If the applicant disagrees with a denial of the request or conditions placed on the approval, the applicant may appeal the executive director's determination by delivering the written appeal and reasons for the disagreement to the executive director.

(ii) Within three working days after the executive director receives the written appeal, the executive director may modify or affirm the determination.

(iii) If the matter is still unresolved after the issuance of the executive director's reconsideration determination, the applicant may appeal the matter, in writing, within ten calendar days to the Board's Budget Development and Board Operations Subcommittee Chair who will determine the process of the appeal and provides for a determination within five working days.

(e) If the applicant for a free speech activity needs a more expeditious process of an appeal, upon written request of the applicant, the Attorney General or designee may advise the executive director, the Board's Budget Development and Board Operations Subcommittee Chair or the Board's Chair or designee of the need to make an immediate consideration of the appeal.

R131-11-7. Expedited Review of Free Speech Concern.

(1) If any person claims to be inhibited from the exercise of constitutionally protected free speech by a public officer, officer or other person on the Capitol Hill Complex, such person is advised to promptly notify the executive director. The executive director will then take reasonable steps in an attempt to resolve the matter.

**KEY: free speech activities, leafletting
December 13, 2006
Notice of Continuation September 20, 2016**

63C-9-301

R156. Commerce, Occupational and Professional Licensing.
R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule.
R156-11a-101. Title.

This rule is known as the "Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule."

R156-11a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or this rule:

(1) "Acrylic nail", as used in Subsections 15A-3-401(4) and R156-11a-102(25), means an extension for natural nails molded out of a polymer powder and a liquid monomer buffed to a shine.

(2) "Advanced pedicures", as used in Subsection 58-11a-102(34)(a)(i)(D), means any of the following while caring for the nails, cuticles or calluses of the feet:

(a) utilizing manual instruments, implements, advanced electrical equipment, tools, or microdermabrasion for cleaning, trimming, softening, smoothing, or buffing;

(b) utilizing blades, including corn or callus planer or rasp, for smoothing, shaving or removing dead skin from the feet as defined in Section R156-11a-611; or

(c) utilizing topical products and preparations for chemical exfoliation as defined in Subsection R156-11a-610(4).

(3) "Aroma therapy" means the application of essential oils which are applied directly to the skin, undiluted or in a misted dilution with a carrier oil or lotion. for varied applications such as massage, hot packs, cold packs, compress, inhalation, steam or air diffusion, or in hydrotherapy services.

(4) "BCA acid" means bicloroacetic acid.

(5) "Body wraps", as used in Subsection 58-11a-102(34)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body.

(6) "Chemical exfoliation", as defined in Subsections 58-11a-102(34)(a)(i)(C) and R156-11a-610(4), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.

(7) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze for deep skin resurfacing by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.

(8) "Dermaplane" means the use of a scalpel or bladed instrument under the direct supervision of a health care practitioner to shave the upper layers of the stratum corneum.

(9) "Direct supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(a).

(10) "Equivalent number of credit hours" means:

(a) the following conversion table if on a semester basis:

- (i) theory - 1 credit hour - 30 clock hours;
- (ii) practice - 1 credit hour - 30 clock hours; and
- (iii) clinical experience - 1 credit hour - 45 clock hours;

and

(b) the following conversion table if on a quarter basis:

- (i) theory - 1 credit hour - 20 clock hours;
- (ii) practice - 1 credit hour - 20 clock hours; and
- (iii) clinical experience - 1 credit hour - 30 clock hours.

(11) "Exfoliation" means the sloughing off of non-living skin cells "corneocytes" by superficial and non-invasive means.

(12) "Extraction" means the following:

(a) "advanced extraction", as used in Subsections 58-11a-102(34)(a)(i)(F) and R156-11a-611(2)(b), means to perform extraction with a lancet or device that removes impurities from

the skin;

(b) "manual extraction", as used in Subsection 58-11a-102(25)(a), means to remove impurities from the skin with protected fingertips, cotton swabs or a loop comedone extractor.

(13) "Galvanic current" means a constant low-voltage direct current.

(14) "General supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(c).

(15) "Health care practitioner" means a physician/surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, a podiatrist under Title 58, Chapter 5A, Podiatric Physician Licensing Act, or a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Practice Act, acting within the appropriate scope of practice.

(16) "Hydrotherapy", as used in Subsection 58-11a-102(34)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.

(17) "Indirect supervision" means the supervising instructor who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(b).

(18) "Limited chemical exfoliation" means a non-invasive chemical exfoliation and is further defined in Subsection R156-11a-610(3).

(19) "Lymphatic massage", as used in Subsections 58-11a-102(34)(a)(ii) and 58-11a-302(11)(e), means a method using a light rhythmic pressure applied by manual or other means to the skin using specific lymphatic maneuvers to promote drainage of the lymphatic fluid through the tissue.

(20) "Manipulating", as used in Subsection 58-11a-102(28)(a), means applying a light pressure by the hands to the skin.

(21) "Microdermabrasion", as used in Subsection 58-11a-102(34)(a)(i)(E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(22) "Microneedling" means the use of multiple tiny solid needles designed to pierce the skin for the purpose of stimulating collagen production or cellular renewal. Devices used may be in the form of rollers, stamps or electronic "pens". It is also known as:

- (a) dermal needling;
- (b) Collagen Induction Therapy (CIT);
- (c) dermal rolling;
- (d) cosmetic dry needling;
- (e) multitrepannic collagen actuation; or
- (f) percutaneous collagen induction.

(23) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear to determine possible allergies of the client to the chemical preparation.

(24) "Pedicure" means any of the following:

- (a) cleaning, trimming, softening, or caring for the nails, cuticles, or calluses of the feet;
- (b) the use of manual instruments or implements on the nails, cuticles, or calluses of the feet;
- (c) callus removal by sanding, buffing, or filing; or
- (d) massaging of the feet or lower portion of the leg.

(25) "Source capture system", as used in Subsections 15A-3-401(4) and 58-11a-502(7), means an air filtration and recirculation system that shall be:

(a) maintained and cleaned according to the manufacturer's instructions; and

- (b) capable of:
 - (i) filtering and recirculating air to inside space not less than 50 cubic feet per minute (cfm) per acrylic nail station; or
 - (ii) exhausting not less than 50 cubic feet per minute (cfm) per acrylic nail station.
- (26) "TCA acid" means trichloroacetic acid.
- (27) "Unprofessional conduct" is further defined, in accordance with Section 58-1-501, in Section R156-11a-502.

R156-11a-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 11a.

R156-11a-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.

R156-11a-301. Change of Legal Entity.

In accordance with Section 58-11a-301, a school shall be required to submit a new application for licensure upon any change of legal entity status. The new legal entity may not engage in practice as a licensed school, pursuant to Subsections 58-11a-102(16) through (19), until the application is approved and a license issued.

R156-11a-302. Good Moral Character - Disqualifying Convictions.

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Section 58-11a-302 and whether the applicant has been involved in unprofessional conduct as set forth in Subsection 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

- (a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Part 12 and 13, may disqualify an applicant from becoming licensed; and
- (b) a criminal conviction for the following crimes may disqualify an applicant from becoming licensed:
 - (i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;
 - (ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;
 - (iii) any offense involving controlled dangerous substances; or
 - (iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

R156-11a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-11a-302, the examination requirements for licensure are established as follows:

(1) Applicants for each classification listed below shall pass within one year prior to the date of application, or within other reasonable timeframe as approved by the Division upon review of applicable extenuating circumstances, the respective examination with a passing score of at least 75% as determined by the examination provider.

(a) Applicants for licensure as a barber shall pass the National Interstate Council of State Boards of Cosmetology (NIC) Barber Theory and Practical Examinations.

(b) Applicants for licensure as a cosmetologist/barber shall pass the NIC Cosmetology/Barber Theory and Practical Examinations.

(c) Applicants for licensure as an electrologist shall pass the NIC Electrology Theory and Practical Examinations.

(d) Applicants for licensure as a basic esthetician shall pass the NIC Esthetics Theory and Practical Examinations.

(e) Applicants for licensure as a master esthetician shall pass the NIC Master Esthetics Theory and Practical Examinations.

(f) Applicants for licensure as a barber instructor, cosmetologist/barber instructor, electrology instructor, esthetician instructor, or nail technology instructor shall pass the NIC Instructor Examination.

(g) Applicants for licensure as a nail technician shall pass the NIC Nail Technology Theory and Practical Examinations.

(2) Any substantially equivalent theory, practical or instructor examination approved by the licensing authority of any other state is acceptable for any of the examinations specified in Subsection(1).

R156-11a-302b. Qualifications for Licensure - Equivalency of Foreign School Education.

In accordance with Subsection 58-11a-302(17):

(1) An applicant shall submit documentation of education equivalency from a foreign school education to a Utah licensed barber school, cosmetology/barber school, esthetics school, electrology school, or nail technology school.

(2) The documentation shall be an education or credential evaluation from one of the following approved credential evaluation services:

- (a) Josef Silny and Associates Incorporated, International Education Consultants; or
- (b) Educational Credential Evaluators Incorporated.

R156-11a-302c. Qualifications for Licensure - Acceptance of Credit Hours.

In accordance with Subsection 58-11a-302(18), credit hours toward graduation may be accepted as follows:

(1) A licensed school may accept credit hours toward the curriculum set forth in Sections R156-11a-700, R156-11a-701, R156-11a-702, R156-11a-703, R156-11a-704 and R156-11a-705 from a licensee under Title 58, Chapter 11a, based upon the licensee's schooling, apprenticeship, or experience.

(2) The credit hours accepted toward graduation shall not exceed the number of hours required in Subsections 58-11a-302(1)(d)(i), 58-11a-302(4)(d)(i), 58-11a-302(7)(d), 58-11a-302(10)(d)(i), 58-11a-302(11)(d)(i), and 58-11a-302(14)(d)(i) for that professional license in Utah.

R156-11a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licenses and certificates under Title 58, Chapter 11a is established by rule in Section R156-1-308a.

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

R156-11a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to provide direct supervision of an apprentice, a student attending a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or a student instructor;

(2) failing to obtain accreditation as a barber, cosmetology/barber, esthetics, electrology, or nail technology school in accordance with the requirements of Section R156-11a-601;

(3) failing to maintain accreditation as a barber, cosmetology/barber, esthetics, electrology or nail technology school after having been approved for accreditation;

(4) failing to comply with the standards of accreditation applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools;

(5) failing to provide adequate instruction or training as applicable to a student of a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or in an approved barber, cosmetology/barber, esthetics, or nail technology apprenticeship;

(6) failing to comply with Title 26, Utah Health Code;

(7) failing to comply with the apprenticeship requirements applicable to barber, cosmetologist/barber, basic esthetician, master esthetician, or nail technician apprenticeships as set forth in Sections R156-11a-800 through R156-11a-804;

(8) failing to comply with the standards for curriculums applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools as set forth in Sections R156-11a-700 through R156-11a-706;

(9) using any device classified by the Food and Drug Administration as a prescriptive medical device without the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice;

(10) performing services within the scope of practice as a basic esthetician, or a master esthetician without having been adequately trained to perform such services;

(11) failing as a supervisor to provide the appropriate level of supervision while a basic esthetician, an electrologist or a master esthetician under supervision is performing service within the scope of practice as set forth in Subsections 58-11a-102(25), 58-11a-102(28) and 58-11a-102(31);

(12) performing services within the scope of practice as a basic esthetician, a master esthetician or an electrologist without having the appropriate level of supervision as required by Subsection 58-11a-102(25), 58-11a-102(28) and 58-11a-102(31);

(13) violating any standard established in Sections R156-11a-601 through R156-11a-612;

(14) performing a procedure while the licensee has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease; and

(15) performing a procedure on a client who has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease.

R156-11a-503. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501(1)(a) and (c), 58-11a-301(1) and (2), 58-11a-502(1), (2), (4), (5), (6), or (7), and 58-11a-503(4), unless otherwise ordered by the presiding officer, the following fine schedule shall apply to citations issued under Title 58, Chapter 11a.

(1) Practicing or engaging in, or attempting to practice or engage in activity for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(1).

First Offense: \$500

Second Offense: \$1,000

(2) Aiding or abetting a person engaging in the practice of, or attempting to engage in the practice of, any occupation or profession for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(2).

First Offense: \$800

Second Offense: \$1,600

(3)(a) Using a solution composed of at least 10% methyl methacrylate (MMA) on a client in violation of Subsection 58-11a-502(4)

First Offense: \$500

Second Offense: \$1,000

(b) Possessing a solution composed of at least 10% methyl methacrylate (MMA) in violation of Subsection 58-11a-502(4)

First Offense: \$500

Second Offense: \$1,000

(4) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-11a-503(4)(h).

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

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

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

R156-11a-601. Standards for Accreditation.

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), the accreditation standards for a barber school, a cosmetology/barber school, an electrology school, an esthetics school, and a nail technology school include:

(1) Each school shall be required to become accredited by:

(a) the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS); or

(b) other accrediting bodies recognized by the U.S. Department of Education.

(2) Each school shall maintain and keep the accreditation current.

(3) A newly licensed school shall pursue accreditation under this section using the following procedure:

(a) A new school shall:

(i) submit an application for candidate status for accreditation to an accrediting commission within one month of the date when the school was licensed by the Division as a barber school, a cosmetology/barber school, an electrology school, an esthetics school, or a nail technology school;

(ii) provide evidence received from the accrediting commission to the Division of achieving candidate status within 12 months of the date the school was licensed;

(iii) file an "Exemption of Registration as a Post-Secondary Proprietary School" form with the Division of Consumer Protection pursuant to Sections 13-34-101 and R152-34-1;

(iv) comply with all applicable accreditation standards during the pendency of its application for accreditation status; and

(v) have 24 months following the date of achieving candidate status to be approved for accreditation.

(b) The Division shall determine whether a newly-licensed school entity has succeeded a previously-licensed school entity for the purposes of achieving accreditation.

(c) If a newly-licensed school is determined by the

Division to be a new entity, then the newly-licensed school shall comply with the accreditation deadlines that are specified in Subsection R156-11a-601(3)(a) above.

(d) If a newly-licensed school is determined by the Division not to be a new entity, then the newly-licensed school shall meet the accreditation deadlines previously set by its accrediting commission.

(4) The Division's determination shall be based upon whether the newly-licensed school:

(a) operates on essentially the same premises as the previously-licensed school;

(b) uses essentially the same staff;

(c) operates under essentially the same ownership; and

(d) maintains the previously-licensed schools's accreditation status with the applicable governing accreditation commission.

(5) A licensee whose accreditation has been withdrawn shall immediately notify the Division.

(6) A licensee who fails to obtain or maintain accreditation status, as required herein, shall immediately surrender to the Division its license as a school. Failure to do so shall constitute a basis for immediate revocation of licensure in accordance with Section 63G-4-502.

R156-11a-602. Standards for the Physical Facility.

In accordance with Subsections 58-11a-302(3)(c)(iii), (6)(c)(iii), (9)(c)(iii), (13)(c)(iii) and (16)(c)(iii), the standards for the physical facility of a barber, cosmetology/barber, electrology, esthetics, or nail technology schools shall include:

(1) the governing standards established by the accreditation commission; and

(2) whether or not addressed in the governing standards, each facility shall have the following available:

(a) enough of each type of training equipment so that each student has an equal opportunity to be properly trained;

(b) laundry facilities to maintain sanitation and sterilization; and

(c) appropriate amounts of clean towels, sheets, linen, sponges, headbands, compresses, robes, drapes and other necessary linens for each student's and client's use.

R156-11a-603. Standards for a Student Kit.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall provide a list of all basic kit supplies needed by each student.

(2) The basic kit may be supplied by the school or purchased independently by the student.

R156-11a-604. Standards for Prohibition Against Operation as a Barbershop, Salon or Spa.

(1) In accordance with Subsections 58-11a-302(3)(c)(iii), (6)(c)(iii), (9)(c)(iv), (13)(c)(iii), and (16)(c)(iii), when a barbershop, professional salon or spa is under the same ownership or is otherwise associated with a school, the barbershop, salon or spa shall maintain separate operations from the school.

(2) If the barbershop, salon or spa is located in the same building as a school, separate entrances and visitor reception areas are required. The barbershop, salon or spa shall also use separate public information releases, advertisements and names than that used by the school.

R156-11a-605. Standards for Protection of Students.

In accordance with Subsections 58-11a-302(3)(c)(iii) and (iv), (6)(c)(iii) and (iv), (9)(c)(iii) and (iv), (13)(c)(iii) and (iv), (16)(c)(iii) and (iv), standards for the protection of students shall include the following:

(1) In the event a school ceases to operate for any reason, the school shall:

(a) notify the Division within 15 days by registered or certified mail; and

(b) name a trustee who shall be responsible for:

(i) maintaining the student records for a minimum period of ten years; and

(ii) providing information such as accumulated student hours and dates of attendance during that time.

(2) Schools shall provide a copy of the written contract prepared in accordance with Section R156-11a-607 to each student.

(3) Schools shall not use students to perform maintenance, janitorial or remodeling work such as scrubbing floor, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work areas, including the floor space, shampoo bowls, laundering of towels and linen and other general cleanup duties that are related to the performance of client services.

(4) Schools shall not require students to sell products applicable to their industry as a condition to graduate, but may provide instruction in product sales techniques as part of their curriculums.

(5) Schools shall keep a daily written record of student attendance.

(6) Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may require the student to retake the class before giving credit for the class. Schools may require a student to take a refresher course or retake a class toward graduation based upon an evaluation of the student's level of competency.

(7) In accordance with Subsection 58-11a-502(3)(a), schools shall not require students to participate in hair removal training that pertains to the genitals or anus of a client.

R156-11a-606. Standards for Protection of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), standards for the protection of barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall include the following:

(1) Schools shall not be required to release documentation of hours earned to a student until the student has paid the tuition or fees owed to the school as provided in the terms of the contract.

(2) Schools may accept transfer students. Schools shall determine the number of hours to be accepted toward graduation based upon an evaluation of the student's level of training in accordance with Section R156-11a-302c.

(3) Hours obtained by a student who is enrolled in a barber, cosmetology/barber, esthetics, master esthetics, or nail technology apprenticeship may not be used to satisfy any of the required hours of school instruction.

R156-11a-607. Standards for a Written Contract.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall complete a written contract with each student prior to admission.

(2) Each contract shall include specifically, or by reference to the school's catalogue or handbook, or both, the following:

(a) the current status of the school's accreditation;

(b) rules of conduct;

(c) attendance requirements;

(d) provisions for make up work;

(e) grounds for probation, suspension or dismissal; and

(f) a detailed fee schedule which shall include the student's financial responsibility upon voluntarily leaving the school or upon being suspended from the school.

(3) The school shall maintain on file a copy of the contract and catalogue or handbook, or both, for each student and shall provide a copy of the contract and catalogue or handbook, or both to the Division upon request.

R156-11a-608. Standards for Staff Requirements of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), the staff requirement for barber, cosmetology/barber, electrology, esthetics and nail technology schools shall include:

(1) Schools shall be required to have, as a minimum, one licensed instructor for every 20 students, or fraction thereof, attending a practical session, and one licensed instructor for any group attending a theory session. Special guest speakers shall not reduce the number of licensed instructors required to be present.

(2) Schools may give credit for special workshops, training seminars, and competitions, or may invite special guest speakers who are not licensed in accordance with Section 58-11a-302, to provide instruction or give practical demonstrations to supplement the curriculum as long as a licensed instructor from the school is present.

(3) Student instructors shall not be counted as part of the instructor staff.

R156-11a-609. Standards for Instructors.

(1) In accordance with Subsections 58-11a-302(2)(e) and (f), (5)(e) and (f), (8)(e) and (f), (12)(e) and (f), and (15)(e) and (f), barber, cosmetology/barber, electrology, esthetics, and nail technology instructors may only teach in those areas for which they have received training and are qualified to teach.

(2) In accordance with Subsection 58-11a-102(9), an individual licensed as a cosmetology/barbering instructor may teach barbering, basic esthetics as part of the cosmetology/barbering curriculum or nail technology in a licensed barber school, a licensed cosmetology/barber school or a licensed nail technology school or in an approved barber, cosmetology/barber or nail technology apprenticeship, provided the individual can demonstrate the same experience as required in Subsection (1).

(3) An instructor may only teach the use of a mechanical or electrical apparatus for which the instructor is trained and qualified.

R156-11a-610. Standards for the Use of Acids.

In accordance with Subsections 58-11a-102(25)(b) and (31)(a)(i)(C) and 58-11a-501(17), the standards for the use of any acid or concentration of acids, shall be:

(1) The use of any acid or acid solution which would exfoliate the skin below the stratum corneum, including those listed in Subsections (3) and (4), is prohibited unless used under the supervision of a licensed health care practitioner.

(2) The following acids are prohibited unless used under the supervision of a licensed health care practitioner:

- (a) phenol;
- (b) bichloroacetic acid;
- (c) resorcinol, except as provided in Subsection (4)(b); and
- (d) any acid in any concentration level that requires a prescription.

(3) Limited chemical exfoliation for a basic esthetician does not include the mixing, combining or layering of skin exfoliation products or services, but does include:

- (a) alpha hydroxy acids of 30% or less, with a pH of not less than 3.0; and
- (b) salicylic acid of 15% or less.

(4) Chemical exfoliation for a master esthetician includes:

(a) acids allowed for a basic esthetician;

(b) modified jessner solution on the face and the tissue immediately adjacent to the jaw line;

(c) alpha hydroxy acids with a pH of not less than 1.0 and at a concentration of 50% must include partially neutralized acids, and any acid above the concentration of 50% is prohibited;

(d) beta hydroxy acids with a concentration of not more than 30%;

(e) trichloroacetic acid, in accordance with Subsection 58-11a-501(17)(c), may be used in a concentration of not more than 15%, but no manual, mechanical or acid exfoliation can be used prior to treatment unless under the general supervision of a licensed health care practitioner; and

(f) vitamin based acids.

(5) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion or microneedling within the previous seven days unless under the general supervision of a licensed health care practitioner.

(6)(a) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

- (i) courses of instruction;
- (ii) specialized training;
- (iii) on-the-job experience; and
- (iv) the approximate percentage that chemical exfoliation represents in the licensee's overall business.

(b) A licensee shall provide the documentation required by Subsection (6)(a) to the Division upon request.

(7) A licensee may not use an acid or perform a chemical exfoliation for which the licensee is not competent to use or perform through training and experience and as documented in accordance with Subsection (6).

(8) Only commercially available products utilized in accordance with manufacturers' instructions may be used for chemical exfoliation purposes.

(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

R156-11a-611. Standards for Approval of Mechanical or Electrical Apparatus.

In accordance with Subsections 58-11a-102(31)(a)(i)(G)(II) and (H), the standards for approval of mechanical or electrical apparatus shall be:

(1) No mechanical or electrical apparatus that is considered a prescription medical device by the FDA may be used by a licensee, unless such use is completed under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.

(2) Dermaplane procedures, dermabrasion procedures, blades, knives, and lancets are prohibited except for:

- (a) advanced pedicures;
- (b) advanced extraction of impurities from the skin; and
- (c) dermaplane procedures for advanced exfoliation as defined in Subsection R156-11a-102(7) by a master esthetician under direct supervision of a health care practitioner.

(3) The use of any procedure in which human tissue is cut or altered by laser energy or ionizing radiation is prohibited for all individuals licensed under this chapter unless it is within the scope of practice for the licensee and under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.

(4) To be approved, a microdermabrasion machine must:

- (a) be specifically labeled for cosmetic or esthetic purposes;
- (b) be a closed-loop vacuum system that uses a tissue retention device; and
- (c) the normal and customary use of the machine does not

result in the removal of the epidermis beyond the stratum corneum.

- (5) To be approved, a microneedling device shall:
- (a) be used only by a master esthetician:
 - (i) without supervision if needle penetration does not exceed 1.5 mm; or
 - (ii) with general supervision by a licensed health care practitioner if needle penetration exceeds 1.5 mm; and
 - (b) be used specifically for cosmetic or esthetic purposes.

R156-11a-612. Standards for Disclosure.

(1) In accordance with Subsections 58-11a-102(25)(b) and (31)(i)(C), a licensee acting within the licensee's scope of practice shall inform a client of the following before applying a chemical exfoliant, using a microneedling device or using a microdermabrasion machine:

- (a) the procedure may only be performed for cosmetic and not medical purposes, unless the licensee is working under the supervision of a licensed health care practitioner, who is working within the scope of the practitioner's license; and
- (b) the benefits and risks of the procedure.

R156-11a-700. Curriculum for Barber Schools.

In accordance with Subsection 58-11a-302(3)(c)(iv), the curriculum for a barber school shall consist of 1,000 hours of instruction in the following subject areas:

- (1) introduction consisting of:
 - (a) history of barbering;
 - (b) an overview of the barber curriculum;
- (2) personal, client and shop safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;
 - (c) health risks to the barber;
- (3) business and shop management including:
 - (a) developing a clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations;
 - (f) advertising;
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies;
 - (c) tax laws;
 - (5) human immune system;
 - (6) diseases and disorders of the hair and scalp including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) decontamination;
 - (e) infection control;
 - (7) implements, tools and equipment for barbering;
 - (8) first aid;
 - (9) anatomy;
 - (10) science of barbering;
 - (11) chemistry for barbering;
 - (12) analysis of the hair and scalp;
 - (13) properties of the hair, skin, and scalp;
 - (14) basic hairstyling and hair cutting including:
 - (a) draping;
 - (b) clipper variations;
 - (c) scissor cutting; and
 - (d) wet and thermal styling;
 - (15) shaving and razor cutting;
 - (16) mustache and beard design;
 - (17) elective topics; and
 - (18) the Utah Barber Examination review.

R156-11a-701. Curriculum for Electrology Schools.

In accordance with Subsection 58-11a-302(9)(c)(iv), the curriculum for an electrology school shall consist of 600 hours of instruction in the following subject areas:

- (1) introduction consisting of:
 - (a) the history of electrology; and
 - (b) an overview of the curriculum;
- (2) personal, client, and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;
- and
 - (c) health risks to the electrologist;
 - (3) business and salon management including:
 - (a) developing a clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations; and
 - (f) advertising;
 - (4) legal issues including:
 - (a) malpractice and liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
 - (5) human immune system;
 - (6) diseases and disorders of hair and skin;
 - (7) implements, tools, and equipment for electrology;
 - (8) first aid;
 - (9) anatomy;
 - (10) science of electrology;
 - (11) analysis of the skin;
 - (12) physiology of hair and skin;
 - (13) medical definitions including:
 - (a) dermatology;
 - (b) endocrinology;
 - (c) angiology; and
 - (d) neurology;
 - (14) evaluating the characteristics of skin;
 - (15) evaluating the characteristics of hair;
 - (16) medications affecting hair growth including:
 - (a) over-the-counter preparations;
 - (b) anesthetics; and
 - (c) prescription medications;
 - (17) contraindications;
 - (18) disease and blood-borne pathogens control including:
 - (a) pathogenic bacteria and non-bacterial causes; and
 - (b) American Electrology Association (AEA) infection control standards;
 - (19) principles of electricity and equipment including:
 - (a) types of electrical currents, their measurements and classifications;
 - (b) Food and Drug Administration (FDA) approved needle type epilation equipment;
 - (c) FDA approved hair removal devices; and
 - (d) epilator operation and care;
 - (20) modalities for need type electrolysis including:
 - (a) needle/probe types, features, and selection;
 - (b) insertions, considerations, and accuracy;
 - (c) galvanic multi needle technique;
 - (d) thermolysis manual and flash technique;
 - (e) blend and progressive epilation technique; and
 - (f) one and two handed techniques;
 - (21) clinical procedures including:
 - (a) consultation;
 - (b) health/medical history;
 - (c) pre and post treatment skin care;
 - (d) normal healing skin effects;
 - (e) tissue injury and complications;
 - (f) treating ingrown hairs;
 - (g) face and body treatment;
 - (h) cosmetic electrology; and

- (i) positioning and draping;
- (22) elective topics; and
- (23) Utah Electrology Examination review.

R156-11a-702. Curriculum for Esthetics School - Basic Esthetician Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school basic esthetician program shall consist of 600 hours of instruction in the following subject areas:

- (1) introduction consisting of:
 - (a) history of esthetics; and
 - (b) an overview of the curriculum;
- (2) personal, client, and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;
- and
- (c) health risks to the basic esthetician;
- (3) business and salon management including:
 - (a) developing a clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations; and
 - (f) advertising.
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
 - (5) human immune system;
 - (6) diseases and disorders of the skin including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) decontamination; and
 - (e) infection control;
 - (7) implements, tools, and equipment for basic esthetics including:
 - (a) high frequency or galvanic current; and
 - (b) heat lamps;
 - (8) first aid;
 - (9) anatomy;
 - (10) science of basic esthetics;
 - (11) analysis of the skin;
 - (12) physiology of the skin;
 - (13) facials, manual and mechanical;
 - (14) limited chemical exfoliation including:
 - (a) pre-exfoliation consultation;
 - (b) post-exfoliation treatments; and
 - (c) chemical reactions;
 - (15) chemistry for basic esthetics;
 - (16) temporary removal of superfluous hair by waxing;
 - (17) treatment of the skin;
 - (18) packs and masks;
 - (19) Aroma therapy;
 - (20) application of makeup including:
 - (a) application of artificial eyelashes;
 - (b) arching of the eyebrows; and
 - (c) tinting of the eyelashes and eyebrows;
 - (21) medical devices;
 - (22) cardio pulmonary resuscitation (CPR);
 - (23) basic facials;
 - (24) chemistry of cosmetics;
 - (25) skin treatments, manual and mechanical;
 - (26) massage of the face and neck;
 - (27) natural nail manicures and pedicures;
 - (28) elective topics; and
 - (29) Utah Esthetic Examination review.

R156-11a-703. Curriculum for Esthetics School -- Master Esthetician Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school master esthetician program shall consist of 1,200 hours of instruction, 600 of which consist of the curriculum for a basic esthetician program, the remaining 600 of which shall be in the following subject areas:

- (1) introduction consisting of:
 - (a) history of esthetics and master esthetics; and
 - (b) an overview of the curriculum;
- (2) personal, client, and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;
- and
- (c) health risks to the master esthetician;
- (3) business and salon management consisting of:
 - (a) developing clients;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) advertising; and
 - (f) public relations;
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
 - (5) the human immune system;
 - (6) diseases and disorders of the skin including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) contamination; and
 - (e) infection controls;
 - (7) implements, tools and equipment for master esthetics;
 - (8) first aid;
 - (9) anatomy;
 - (10) science of master esthetics;
 - (11) analysis of the skin;
 - (12) physiology of the skin;
 - (13) advanced facials, manual and mechanical;
 - (14) chemistry for master esthetics;
 - (15) advanced chemical exfoliation, including:
 - (a) pre-exfoliation consultation;
 - (b) post-exfoliation treatments; and
 - (c) reactions;
 - (16) temporary removal of superfluous hair by waxing and advanced waxing;
 - (17) advanced pedicures;
 - (18) advanced Aroma therapy;
 - (19) the aging process and its damage to the skin;
 - (20) medical devices;
 - (21) cardio pulmonary resuscitation (CPR) training;
 - (22) hydrotherapy;
 - (23) advanced mechanical and electrical devices including instruction in using:
 - (a) sanding and microdermabrasion techniques;
 - (b) galvanic or high-frequency current for treatment of the skin;
 - (c) devices equipped with a brush to cleanse the skin;
 - (d) devices that apply a mixture of steam and ozone to the skin;
 - (e) devices that spray water and other liquids on the skin;
 - and
 - (f) any other mechanical devices, esthetic preparations or procedures approved by the Division in collaboration with the Board for the care and treatment of the skin;
 - (24) elective topics;
 - (25) for schools teaching lymphatic massage, in accordance with Subsections 58-11a-102(31)(a)(ii) and 58-11a-

302(11)(d)(i)(C), 200 hours of instruction is required and shall consist of:

- (a) 40 hours of training in anatomy and physiology of the lymphatic system;
 - (b) 70 applications of one hour each in manual lymphatic massage of the full body; and
 - (c) 90 hours of training in lymphatic massage by other means, including but not limited to energy, mechanical devices, suction assisted massage with or without rollers, compression therapy with equipment, or garment therapy; and
- (26) Utah Master Esthetician Examination review.

R156-11a-704. Curriculum for Nail Technology Schools.

In accordance with Subsection 58-11a-302(16)(c)(iv), the curriculum for a nail technology school shall consist of 300 hours of instruction in the following subject areas:

- (1) introduction consisting of:
 - (a) history of nail technology; and
 - (b) an overview of the curriculum;
 - (2) personal, client and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;
- and
- (c) health risks to the nail technician;
 - (3) business and salon management including:
 - (a) developing clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations; and
 - (f) advertising;
 - (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
 - (5) human immune system;
 - (6) diseases and disorders of the nails and skin including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) decontamination; and
 - (e) infection control;
 - (7) implements, tools and equipment for nail technology;
 - (8) first aid;
 - (9) anatomy;
 - (10) science for nail technology;
 - (11) theory of basic manicuring including hand and arm massage;
 - (12) physiology of the skin and nails;
 - (13) chemistry for nail technology;
 - (14) artificial nail techniques consisting of:
 - (a) wraps;
 - (b) nail tips;
 - (c) gel nails;
 - (d) sculptured and other acrylic nails; and
 - (e) nail art;
 - (15) pedicures and massaging the lower leg and foot;
 - (16) elective topics; and
 - (17) Utah Nail Technology Examination review.

R156-11a-705. Curriculum for Cosmetology/Barber Schools.

In accordance with Subsection 58-11a-302(6)(c)(iv), the curriculum for a cosmetology/barber school shall consist of 1,600 hours of instruction in all of the following subject areas:

- (1) introduction consisting of:
 - (a) history of barbering, cosmetology/barbering, esthetics, nail technology; and
 - (b) overview of the curriculum;
- (2) personal, client and salon safety including:

- (a) aseptic techniques and sanitary procedures;
- (b) disinfection and sterilization methods and procedures;
- (c) health risks to the cosmetologist/barber;
- (3) business and salon management including:
 - (a) developing clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations; and
 - (f) advertising;
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
 - (5) human immune system;
 - (6) diseases and disorders of skin, nails, hair, and scalp including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) decontamination; and
 - (e) infection control;
 - (7) implements, tools and equipment for cosmetology, barbering, basic esthetics and nail technology, including:
 - (a) high frequency or galvanic current; and
 - (b) heat lamps;
 - (8) first aid;
 - (9) anatomy;
 - (10) science of cosmetology/barbering, basic esthetics and nail technology;
 - (11) analysis of the skin, hair and scalp;
 - (12) physiology of the human body including skin and nails;
 - (13) electricity and light therapy;
 - (14) limited chemical exfoliation including:
 - (a) pre-exfoliation consultation;
 - (b) post-exfoliation treatments; and
 - (c) chemical reactions;
 - (15) chemistry for cosmetology/barbering, basic esthetics and nail technology;
 - (16) temporary removal of superfluous hair including by waxing;
 - (17) properties of the hair, skin and scalp;
 - (18) basic hairstyling including:
 - (a) wet and thermal styling;
 - (b) permanent waving;
 - (c) hair coloring;
 - (d) chemical hair relaxing; and
 - (e) thermal hair straightening;
 - (19) haircuts including:
 - (a) draping;
 - (b) clipper variations;
 - (c) scissor cutting;
 - (d) shaving; and
 - (e) wigs and artificial hair;
 - (20) razor cutting for men;
 - (21) mustache and beard design;
 - (22) basic esthetics including:
 - (a) treatment of the skin, manual and mechanical;
 - (b) packs and masks;
 - (c) aroma therapy;
 - (d) chemistry of cosmetics;
 - (e) application of makeup including:
 - (i) application of artificial eyelashes;
 - (ii) arching of the eyebrows;
 - (iii) tinting of the eyelashes and eyebrows;
 - (f) massage of the face and neck; and
 - (g) natural manicures and pedicures;
 - (23) medical devices;

- (24) cardio pulmonary resuscitation (CPR);
- (25) artificial nail techniques consisting of:
 - (a) wraps;
 - (b) nail tips;
 - (c) gel nails;
 - (d) sculptured and other acrylic nails; and
 - (e) nail art;
- (26) pedicures and massaging of the lower leg and foot;
- (27) elective topics; and
- (28) Utah Cosmetology/Barber Examination review.

R156-11a-706. Curriculum for Instructor Schools.

In accordance with Subsections 58-11a-302(2)(e)(i), (5)(e)(i), (8)(e)(i), (12)(e)(i) and (15)(e)(i), the curriculum for an approved instructor school shall consist of instructor training in the following subjects:

- (1) motivation and the learning process;
- (2) teacher preparation;
- (3) teaching methods;
- (4) classroom management;
- (5) testing;
- (6) instructional evaluation;
- (7) laws, rules and regulations; and
- (8) Utah Barber, Cosmetology/Barber, Esthetics (Master level), Electrology and Nail Technology Instructors Examination review.

R156-11a-800. Approved Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved barber apprenticeship shall include the following:

- (1) The instructor shall have only one apprentice at a time.
- (2) The apprentice shall register with the Division by submitting a form prescribed by the Division.
- (3) The instructor must be approved by the Division for the apprenticeship.
- (4) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".
- (5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.
- (6) A complete set of barber texts shall be available to the apprentice.
- (7) An apprentice may be compensated for services performed.
- (8) The instructor shall provide training and technical instruction of 1,250 hours using the curriculum defined in Section R156-11a-700.
- (9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.
- (10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-700.
- (11) Any hours obtained while enrolled in a barber school or a cosmetology/barber school shall not be used to satisfy the required 1,250 hours of apprentice training.
- (12) An instructor may not begin a new apprenticeship until:

(a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Barber Theory and Practical Examinations and becomes licensed as a barber; or

- (b) the Division receives a Notice of Disassociation Form

by the apprentice or instructor.

(13) If an apprentice completes the apprenticeship and fails the National Interstate Council of State Boards of Cosmetology (NIC) Barber Theory and Practical Examinations three times:

- (a) the apprentice and instructor must meet with the Board at the next appropriate Board meeting;
- (b) explain to the Board why the apprentice is not able to pass the examination; and
- (c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-801. Approved Cosmetologist/Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved cosmetology/barber apprenticeship include:

- (1) The instructor shall have only one apprentice at a time.
- (2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.
- (3) The instructor must be approved by the Division for the apprenticeship.
- (4) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".
- (5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.
- (6) A complete set of cosmetology/barber texts shall be available to the apprentice.
- (7) An apprentice may be compensated for services performed.
- (8) The instructor shall provide training and technical instruction of 2,500 hours using the curriculum defined in Section R156-11a-705.
- (9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.
- (10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-705.
- (11) Hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 2,500 hours of apprentice training.
- (12) An instructor may not begin a new apprenticeship until:

(a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Cosmetology/Barber Theory and Practical Examinations and becomes licensed as a cosmetologist/barber; or

(b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

(13) If an apprentice completes the apprenticeship and fails the National Interstate Council of State Boards of Cosmetology (NIC) Cosmetology/Barber Theory and Practical Examinations three times:

- (a) the apprentice and instructor must meet with the Board at the next appropriate Board meeting;
- (b) explain to the Board why the apprentice is not able to pass the examination; and
- (c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-802. Approved Basic Esthetician Apprenticeship

Requirements.

In accordance with Subsection 58-11a-102(2), the requirements for an approved basic esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

(4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training".

(5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

(6) A complete set of esthetics texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 800 hours using the curriculum defined in Section R156-11a-702.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours required in technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-702.

(11) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 800 hours of apprentice training.

(12) An instructor may not begin a new apprenticeship until:

(a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Esthetics Theory and Practical Examinations and becomes licensed as an esthetician; or

(b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

(13) If an apprentice completes the apprenticeship and fails the National Interstate Council of State Boards of Cosmetology (NIC) Esthetics Theory and Practical Examinations three times:

(a) the apprentice and instructor must meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination; and

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-803. Approved Master Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(3), the requirements for an approved master esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

(4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

(6) A complete set of esthetics texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 1,500 hours using the curriculum defined in Section R156-11a-703.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the required hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-703.

(11) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 1,500 hours of apprentice training.

(12) An instructor may not begin a new apprenticeship until:

(a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Master Esthetics Theory and Practical Examinations and becomes licensed as a master esthetician; or

(b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

(13) If an apprentice completes the apprenticeship and fails the National Interstate Council of State Boards of Cosmetology (NIC) Master Esthetics Theory and Practical Examinations three times:

(a) the apprentice and instructor must meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination; and

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-804. Approved Nail Technician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(4), the requirements for an approved nail technician apprenticeship include:

(1) The instructor shall have no more than two apprentices at a time.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

(4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

(6) A complete set of nail technician texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 375 hours using the curriculum defined in Section

R156-11a-704.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-704.

(11) Hours obtained while enrolled in a nail technology school or a cosmetology/barber school shall not be used to satisfy the required 375 hours of apprentice training.

(12) An instructor may not begin a new apprenticeship until:

(a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Nail Technology Theory and Practical Examinations and becomes licensed as a nail technician; or

(b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

(13) If an apprentice completes the apprenticeship and fails the National Interstate Council of State Boards of Cosmetology (NIC) Nail Technology Theory and Practical Examinations three times:

(a) the apprentice and instructor must meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination; and

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-805. Conflicts of Interest.

An apprentice instructor may not be an employee of an apprentice or be involved in any relationship with an apprentice or others that would interfere with the instructor's ability to teach and train the apprentice.

R156-11a-901. Standards for an On-the-Job Training Internship.

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in an on-the-job training internship if they meet the following requirements:

(1) The on-the-job training intern shall have completed at least 1,000 hours of the training contracted with a cosmetology/barber school, of which 400 hours shall be clinical hours.

(2) There shall be a conspicuous sign near the work station of the on-the-job training intern stating "Intern in Training".

(3) A licensed "on-site" cosmetology/barber shall supervise only one on-the-job training intern at a time.

(4) An on-the-job training intern, while working under the direct supervision of an "on-site" licensed cosmetologist/barber, may perform the following procedures:

- (a) draping;
- (b) shampooing;
- (c) roller setting;
- (d) blow drying styling;
- (e) applying color;
- (f) removing color by rinsing and shampooing;
- (g) removing permanent chemicals;
- (h) removing permanent rods;
- (i) removing rollers;
- (j) applying temporary rinses, reconditioners, and rebuilders;
- (k) acting as receptionists;
- (l) doing retail sales;
- (m) sanitizing the salon;
- (o) doing inventory and ordering supplies; and

(p) handing equipment to the cosmetologist/barber supervisor.

(5) The "on-site" cosmetologist/barber supervisor shall have in the supervisor's possession a letter, which must be updated on a quarterly basis, from the school where the on-the-job training intern is enrolled stating that the on-the-job training intern is currently in good standing at the school and is complying with school requirements.

(6) Hours of training spent while performing on-the-job training as an intern shall not apply towards credits required for graduation.

R156-11a-902. Standards for an On-the-Job Instructor Training.

(1) In accordance with Subsections 58-11a-302(2)(e)(ii), (5)(e)(ii), (8)(e)(ii), (12)(e)(ii) and (15)(e)(ii), an employee of a licensed barber, cosmetology/barber, electrology, esthetics or nail technology school may obtain on-the-job training to become a licensed instructor if they meet the following requirements of this section.

(2) The on-the-job instructor training shall be under the supervision of an instructor licensed as an instructor in the same category as the trainee, except that an instructor providing on-the-job instructor training supervision for basic esthetics instruction shall be licensed as a master esthetician.

(3) The instructor trainee shall have an active license in the same category for which the instructor trainee is seeking licensure to instruct, except an instructor trainee receiving on-the-job training to instruct basic esthetics shall be licensed as a master esthetician.

(4) The on-the-job instructor training shall include all of the following categories:

- (a) motivation and the learning process;
- (b) teacher preparation;
- (c) teaching methods;
- (d) classroom management;
- (e) testing;
- (f) instructional evaluation;
- (g) laws, rules and regulations; and
- (h) Utah Barber, Cosmetology/Barber, Esthetics (Master level), Electrology and Nail Technology Instructors Examination review.

(5) The instructor trainee shall not count toward the instructor-to-student ratio.

(6) The on-the-job instructor training shall be completed within one year, unless the instructor trainee provides documentation of extenuating circumstances justifying an extension.

KEY: cosmetologists/barbers, estheticians, electrologists, nail technicians

September 8, 2016

Notice of Continuation February 6, 2012

58-11a-101

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-15A. State Construction Code Administration and Adoption of Approved State Construction Code Rule.
R156-15A-101. Title.

This rule is known as the "State Construction Code Administration and Adoption of Approved State Construction Code Rule".

R156-15A-102. Definitions.

In addition to the definitions in Title 15A, as used in Title 15A or this rule:

(1) "Building permit" means, for the purpose of determining the building permit surcharge under Subsection 15A-1-209(5)(a), a warrant, license or authorization to build or construct a building or structure or any part thereof.

(2) "Building permit fee" means, for the purpose of determining the building permit surcharge under Subsection 15A-1-209(5)(a), fees assessed by a state agency or state political subdivision for the issuance of permits for construction, alteration, remodeling, repair, and installation, including building, electrical, mechanical and plumbing components.

(3) "Permit number", as used in Section 15A-1-209, means the standardized building permit number described below in Sections R156-15A-220 and R156-15A-221.

(4) "Refuses to establish a method of appeal" means, with respect to Subsection 15A-1-207(3)(b), that a compliance agency does not in fact adopt a formal written method of appealing uniform building standard matters in accordance with generally recognized standards of due process; or, that the compliance agency does not convene an appeals board and render a decision in the matter within ninety days from the date on which the appeal is properly filed with the compliance agency.

R156-15A-103. Authority.

This rule is adopted by the Division under the authority of Subsection 15A-1-204(6), Section 15A-1-205 and Subsection 58-1-106(1)(a) to enable the Division to administer Title 15A.

R156-15A-201. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsections 58-1-203(1)(f) and 15A-1-203(10)(d), the following advisory peer committees to the Uniform Building Codes Commission:

(a) the Education Advisory Committee consisting of ten members, which shall include a factory built housing dealer, a design professional, a general contractor, an electrical contractor, a mechanical or plumbing contractor, an educator, and four inspectors (one from each of the specialties of plumbing, electrical, mechanical and general building);

(b) the Plumbing and Health Advisory Committee consisting of nine members;

(c) the Structural Advisory Committee consisting of seven members;

(d) the Architectural Advisory Committee consisting of seven members;

(e) the Fire Protection Advisory Committee consisting of five members;

(i) This committee shall join together with the Fire Advisory and Code Analysis Committee of the Utah Fire Prevention Board to form the Unified Code Analysis Council.

(ii) The Unified Code Analysis Council shall meet as directed by the Utah Fire Prevention Board, or as directed by the Uniform Building Code Commission, or as needed to review fire prevention and building code issues that require definitive and specific analysis.

(iii) The Unified Code Analysis Council shall select one of its members to act as chair and another to act as vice chair. The chair and vice chair shall serve for one-year terms on a calendar

year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

(iv) The chair or vice chair shall report to the Utah Fire Prevention Board or Uniform Building Code Commission recommendations of the council with regard to the review of fire and building codes;

(f) the Mechanical Advisory Committee consisting of seven members; and

(g) the Electrical Advisory Committee consisting of seven members.

(2) The committees shall be appointed and serve in accordance with Subsection 15A-1-203(10)(d). The membership of each committee shall be made up of individuals who have direct knowledge or involvement in the area of code involved in the title of that committee.

(3) The duties and responsibilities of the committees shall include:

(a) reviewing codes proposed for adoption or approval as assigned by the Division in collaboration with the Commission;

(b) reviewing requests for amendments to the adopted codes or approved codes as assigned to each committee by the Division with the collaboration of the Commission; and

(c) submitting recommendations concerning the reviews made under Subsection (a) and (b).

(4) The duties and responsibilities of the Education Advisory Committee shall include:

(a) reviewing and making recommendations regarding funding requests that are submitted; and

(b) reviewing and making recommendations regarding budget, revenue and expenses of the education fund established pursuant to Subsection 15A-1-209(5).

R156-15A-202. Code Amendment Process.

In accordance with Section 15A-1-206, the procedure and manner under which requests for amendments to codes shall be filed with the Division and recommended or declined for adoption are as follows:

(1) All requests for amendments to any of the adopted codes or approved codes shall be submitted to the Division on forms specifically prepared by the Division for that purpose.

(2) The processing of requests for code amendments shall be in accordance with Division policies and procedures.

R156-15A-210. Compliance with Codes - Appeals.

If the Commission is required to act as an appeals board in accordance with the provisions of Subsection 15A-1-207(3)(b), the following shall regulate the convening and conduct of the appeals board:

(1) If a compliance agency refuses to establish a method of appeal regarding a uniform building standard issue, the appellant may petition the Commission to act as the appeals board.

(2) The appellant shall file the request to convene the Commission as an appeals board in accordance with the requirements for a request for agency action, as set forth in Subsection 63G-4-201(3)(a) and Section R151-4-201. A request by other means shall not be considered and shall be returned to the appellant with appropriate instructions.

(3) A copy of the final written decision of the compliance agency interpreting or applying a code which is the subject of the dispute shall be submitted as an attachment to the request. If the appellant requests, but does not receive a timely final written decision, the appellant shall submit an affidavit to this effect in lieu of including a copy of the final written decision with the request.

(4) The request shall be filed with the Division no later than 30 days following the issuance of the compliance agency's disputed written decision.

(5) The compliance agency shall file a written response to

the request not later than 20 days after the filing of the request. The request and response shall be provided to the Commission in advance of any hearing in order to properly frame the disputed issues.

(6) Except with regard to the time period specified in Subsection (7), the time periods specified in this section may, upon a showing of good cause, be modified by the presiding officer conducting the proceeding.

(7) The Commission shall convene as an appeals board within 45 days after a request is properly filed.

(8) Upon the convening of the Commission as an appeals board, the board members shall review the issue to be considered to determine if a member of the board has a conflict of interest which would preclude the member from fairly hearing and deciding the appeal. If it is determined that a conflict does exist, the member shall be excused from participating in the proceeding.

(9) The hearing shall be a formal hearing held in accordance with the Utah Administrative Procedures Act, Title 63G, Chapter 4.

(10) Decisions relating to the application and interpretation of the code made by a compliance agency board of appeals shall be binding for the specific individual case and shall not require Commission approval.

R156-15A-220. Standardized Building Permit Number.

As provided in Section 15A-1-209, any agency issuing a permit for construction within the state of Utah shall use the standardized building permit numbering system in a form adopted by rule. There are no additional requirements to those specified in Subsection 15A-1-209.

R156-15A-230. Building Code Training Fund Fees.

In accordance with Subsection 15A-1-209(5)(a), on April 30, July 31, October 31 and January 31 of each year, each state agency and each state political subdivision that assesses a building permit fee shall file with the Division a report of building fees and surcharge for the immediately preceding calendar quarter; and, shall remit 80% of the amount of the surcharge collected to the Division.

R156-15A-231. Administration of Building Code Training Fund and Factory Built Housing Fees Account.

In accordance with Subsection 15A-1-209(5)(c), the Division shall use monies received under Subsection 15A-1-209(5)(a) to provide education regarding codes and code amendments to building inspectors and individuals engaged in construction-related trades or professions. In accordance with Subsection 58-56-17.5(2)(c), the Division shall use a portion of the monies received under Subsection 58-56-17.5(1) to provide education for factory built housing. The following procedures, standards, and policies are established to apply to the administration of these separate funds:

(1) The Division shall not approve or deny education grant requests from the Building Code Training Fund or from the Factory Built Housing Fees Account until the Uniform Building Code Commission (UBCC) Education Advisory Committee ("the Committee"), created in accordance with Subsections 58-1-203(1)(f) and R156-15A-201(1)(a), has considered and made its recommendations on the requests.

(2) Appropriate funding expenditure categories include:

(a) grants in the form of reimbursement funding to the following organizations that administer code related or factory built housing educational events, seminars or classes:

(i) schools, colleges, universities, departments of universities, or other institutions of learning;

(ii) professional associations or organizations; and

(iii) governmental agencies.

(b) costs or expenses incurred as a result of educational

events, seminars, or classes directly administered by the Division;

(c) expenses incurred for the salary, benefits or other compensation and related expenses resulting from the employment of a Board Secretary;

(d) office equipment and associated administrative expenses required for the performance of the duties of the Board Secretary, including but not limited to computer equipment, telecommunication equipment and costs and general office supplies; and

(e) other related expenses as determined by the Division.

(3) The following procedure shall be used for submission, review and payment of funding grants:

(a) A funding grant applicant shall submit a completed "Application for Building Code Training Funds Grant" or a "Factory Built Housing Education Grant Application" a minimum of 15 days prior to the meeting at which the request is to be considered and prior to the training event on forms provided for that purpose by the Division. Applications received less than 15 days prior to a meeting may be denied.

(b) Payment of approved funding grants will be made as reimbursement after the approved event, class, or seminar has been held and the required receipts, invoices and supporting documentation, including proof of payment, if requested by the Division or Committee, have been submitted to the Division.

(c) Approved funding grants shall be reimbursed only for eligible expenditures which have been executed in good faith with the intent to ensure the best reasonable value.

(d) A Request for Reimbursement of an approved funding grant shall be submitted to the Division within 60 days following the approved event, class, or seminar unless an extenuating circumstance occurs. Written notice must be given to the Division of such an extenuating circumstance. Failure to submit a Request for Reimbursement within 60 days shall result in non-payment of approved funds, unless an extenuating circumstance has been reviewed and accepted by the Division.

(4) The Committee shall consider the following in determining whether to recommend approval of a proposed funding request to the Division:

(a) the fund balance available and whether the proposed request meets the overall training objectives of the fund, including but not limited to:

(i) the need for training on the subject matter;

(ii) the need for training in the geographical area where the training is offered; and

(iii) the need for training on new codes being considered for adoption;

(b) whether the grant applicant agrees to charge a cost for the training event, class, or seminar which is uniform across all categories of attendees;

(c) the prior record of the program sponsor in providing codes training including:

(i) whether the subject matter taught was appropriate;

(ii) whether the instructor was appropriately qualified and prepared; and

(iii) whether the program sponsor followed appropriate and adequate procedures and requirements in providing the training and submitting requests for funding;

(d) costs of the facility including:

(i) the location of a facility or venue, or the type of event, seminar or class;

(ii) the suitability of said facility or venue with regard to the anticipated attendance at or in connection with additional non-funded portions of an event or conference;

(iii) the duration of the proposed educational event, seminar, or class; and

(iv) whether the proposed cost of the facility is reasonable compared to the cost of alternative available facilities;

(e) the estimated cost for instructor fees including:

(i) a reimbursement rate not to exceed \$150 per instruction hour without further review and approval by the Committee;

(ii) the experience or expertise of the instructor in the proposed training area;

(iii) the quality of training based upon events, seminars or classes that have been previously taught by the instructor;

(iv) the drawing power of the instructor, meaning the ability to increase the attendance at the proposed educational event, seminar or class;

(v) travel expenses; and

(vi) whether the proposed cost for the instructor or instructors is reasonable compared to the costs of similar educational events, seminars, or classes;

(f) the estimated cost of advertising materials, brochures, registration and agenda materials, including:

(i) printing costs that may include creative or design expenses;

(ii) whether printed materials comply with (4)(b); and

(iii) delivery or mailing costs;

(g) other reasonable and comparable cost alternatives for each proposed expense item;

(h) other information the Committee reasonably believes may assist in evaluating a proposed expenditure; and

(i) a total reimbursement rate of the lesser of \$10 per student hour or the cost of all approved actual expenditures.

(5) The Division, after consideration and recommendation of the Committee, based upon the criteria in Subsection (4), may reimburse the following items in addition to the lesser of \$10 per student hour or the cost of all approved actual expenditures:

(a) text books, code books, or code update books;

(b) cost of one Division licensee mailing list per provider per two-year renewal period;

(c) cost incurred to upload continuing education hours into the Division's online registry for contractors, plumbers, electricians or elevator mechanics; and

(d) reasonable cost of advertising materials, brochures, registration and agency materials, including:

(i) printing costs that may include creative or design expenses; and

(ii) delivery or mailing costs.

(6) Joint function.

(a) "Joint function" means a proposed event, class, seminar, or program that provides code or code related or factory built housing education and education or activities in other areas.

(b) Only the prorated portions of a joint function that are code and code related or factory built housing education are eligible for a funding grant.

(c) In considering a proposed funding request that involves a joint function, the Committee shall consider whether:

(i) the expenses subject to funding are reasonably prorated for the costs directly related to the code and code amendment or factory built housing education; and

(ii) the education being proposed will be reasonable and successful in the training objective in the context of the entire program or event.

(7) Advertising materials, brochures and agenda or training materials for a Building Code Training funded educational event, seminar, or class shall include a statement that acknowledges that partial funding of the training program has been provided by the Utah Division of Occupational and Professional Licensing from the 1% surcharge funds on all building permits.

(8) Advertising materials, brochures and agenda or training materials for a Factory Built Housing Fees Account funded educational event, seminar, or class shall include a statement that acknowledges that partial funding of the training program has been provided by the Utah Division of Occupational and Professional Licensing from surcharge fees on factory built

housing sales.

(9) If an approved event or joint event is not held, no amount is reimbursable with the exception of the costs described in Subsection (5)(d).

R156-15A-301. Factory Built Housing Dispute Resolution.

In accordance with Subsection 15A-1-306(1)(f)(i), the dispute resolution program is defined and clarified as follows:

(1) Persons with manufactured housing disputes may file a complaint with the Division.

(2) The Division shall investigate such complaints and as part of the investigation may take any of the following actions:

(a) negotiate an informal resolution with the parties involved;

(b) take any informal or formal action allowed by any applicable statute, including but not limited to:

(A) pursuing disciplinary proceedings under Section 58-1-401;

(B) assessing civil penalties under Subsection 15A-1-306(2); and

(C) referring matters to appropriate criminal prosecuting agencies and cooperating or assisting with the investigation and prosecution of cases by such agencies.

(3) In addition, persons with manufactured housing disputes may pursue a civil remedy.

R156-15A-401. Adoption - Approved Codes.

Approved Codes. In accordance with Subsection 15A-1-204(6)(a), and subject to the limitations contained in Subsection 15A-1-204(6)(b), the following codes or standards are hereby incorporated by reference and approved for use and adoption by a compliance agency as the construction standards which may be applied to existing buildings in the regulation of building alteration, remodeling, repair, removal, seismic evaluation, and rehabilitation in the state:

(1) the 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings (UCADB) promulgated by the International Code Council;

(2) ASCE 31-03, Seismic Evaluation of Existing Buildings, promulgated by the American Society of Civil Engineers;

(3) ASCE/SEI 41-06, the Seismic Rehabilitation of Existing Buildings, promulgated by the American Society of Civil Engineers, 2007 edition.

KEY: contractors, building codes, building inspections, licensing

September 26, 2016

Notice of Continuation June 20, 2016

58-1-106(1)(a)

58-1-202(1)(a)

15A-1-204(6)

15A-1-205

**R156. Commerce, Occupational and Professional Licensing.
R156-64. Deception Detection Examiners Licensing Act
Rule.**

R156-64-101. Title.

This rule is known as the "Deception Detection Examiners Licensing Act Rule".

R156-64-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 64, as used in this rule:

(1) "Activity sensor", as used in Subsection R156-64-502(2)(i), means a sensor attached to a deception detection instrument that is approved for use by the manufacturer of the instrument for placement under the buttocks of the examinee to detect movement and attempts at countermeasures by the examinee.

(2) "Clinical examination", as used in Subsection R156-64-502(2)(g), means a deception detection examination which is not intended to supplement and assist in a criminal investigation.

(3) "Comparison question", as used in Subsection R156-64-102(8), means a nonrelevant test question used for comparison against a relevant test question in a deception detection examination.

(4) "Concealed information examination", as used in Subsection R156-64-502(2)(g), means a psychophysiological technique for examining whether a person has knowledge of crime-relevant information.

(5) "Deception detection case file", as used in Subsection R156-64-502(2)(o), means written records of a polygraph exam including:

- (a) case information;
- (b) the name and license number of the examiner;
- (c) a list of all questions used during the examination;
- (d) copies of all charts recorded during the examination;

and

(e) either the audio or video recording of the examination.

(6) "Directed lie screening exam", as used in Subsection R156-64-502(2)(d), means a screening exam in which the examinee is instructed to lie to one or more questions.

(7) "Experienced deception detection examiner", as used in Section R156-64-302f, means a deception detection examiner who has completed over 250 deception detection examinations and has been licensed or certified by the United States Government for three years or more.

(8) "Irrelevant and relevant testing", as used in Subsection R156-64-502(2)(e), means a deception detection examination which consists of relevant questions, interspersed with irrelevant questions, and does not include any type of comparison questions.

(9) "Irrelevant question", as used in Subsection R156-64-102(8), means a question of neutral impact, which does not relate to a matter under inquiry, in a deception detection examination.

(10) "Post conviction sex offender testing", as used in Subsections R156-64-302f(2) and R156-64-502(2)(p), means testing of sex offenders and includes:

- (a) sexual history testing to determine if the examinee is accurately reporting all sexual offenses prior to a conviction;
- (b) maintenance testing to determine if the examinee is complying with the conditions of probation or parole; and
- (c) specific issue/single issue examinations.

(11) "Pre-employment examination", as used in Subsection R156-64-502(2)(d) and (g), means a deception detection screening examination administered as part of a pre-employment background investigation.

(12) "Relevant question", as used in Subsection R156-64-102(8), means a question which relates directly to a matter under inquiry in a deception detection examination.

(13) "Screening examination", as used in Subsections R156-64-502(2)(d) and (g), means a multiple issue deception detection examination administered to determine the examinee's truthfulness concerning more than one narrowly defined issue in the absence of any specific allegation.

(14) "Specific issue/single issue examination", as used in Subsections R156-64-102(10)(c) and R156-64-502(2)(d) and (g), means a deception detection examination administered to determine the examinee's truthfulness concerning one narrowly defined issue.

(15) "Supervision" means general supervision as established in Subsection R156-1-102a(4)(c).

(16) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 64, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-64-502.

(17) "Work experience", as used in Subsection 58-64-302(3)(f) and R156-64-302c(3), means work done while licensed as a deception detection examiner, deception detection examiner intern, deception detection examiner administrator, or while exempt from licensure under this chapter.

R156-64-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 64.

R156-64-104. 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.

R156-64-302a. Qualifications for Licensure - Application Requirements - Criminal Background Check.

Pursuant to Section 58-64-302, an application for licensure under all classifications under Title 58, Chapter 64 shall be accompanied by:

- (a) two fingerprint cards for the applicant; and
- (b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a records check of:
 - (i) the Federal Bureau of Investigation; and
 - (ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.

R156-64-302b. Qualifications for Licensure - Deception Detection Examiner and Deception Detection Examiner Intern Education Requirements.

In accordance with Subsections 58-64-302(1)(f)(i) and 58-64-302(2)(f)(i), deception detection examiner and deception detection examiner intern applicants shall have earned a bachelor's degree from a university or college program, that at the time the applicant graduated, was accredited through the U.S. Department of Education or one of the regional accrediting association of schools and colleges.

R156-64-302c. Qualifications for Licensure - Experience Requirements.

(1) In accordance with Subsections 58-64-302(1)(f)(ii) and 58-64-302(2)(f)(ii), deception detection examiner and deception detection examiner intern applicants shall have 8,000 hours of investigation experience with a federal, state, county, or municipal law enforcement agency. Equivalent investigation experience may be approved by the Division in collaboration with the Board.

(2) In accordance with Subsection 58-64-302(1)(f)(iii) and 58-64-302(2)(f)(iii), deception detection examiner and deception detection examiner intern applicants may complete, in part or in whole, the college education requirements in Subsection R156-64-302b through additional investigation experience in the ratio of 2,000 hours of investigation experience, beyond the required 8,000 hour requirement in

Subsection R156-64-302c(1), for one year as a matriculated student in an accredited bachelor's degree program.

(3) In accordance with Subsection 58-64-302(3)(f), deception detection examination administrator applicants may complete, in part or in whole, the college education requirements in Subsection 58-64-302(3)(f) through additional work experience in the ratio of 2,000 hours of work experience for one year as a matriculated student in an accredited associate's degree program.

R156-64-302d. Qualifications for Licensure - Deception Detection Training Requirements.

(1) In accordance with Subsection 58-64-302(1)(g) and 58-64-302(2)(g), a deception detection training program for a deception detection examiner or a deception detection examiner intern shall consist of graduation from a deception detection training program in a school accredited by the American Polygraph Association.

(2) In accordance with Subsection 58-64-302(3)(g), a deception detection training program for a deception detection examination administrator shall consist of graduation from a certification program provided by a software manufacturer.

R156-64-302e. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-1-309, deception detection examiner and deception detection examiner intern applicants shall pass the Utah Deception Detection Examiners Law and Rule Examination with a score of at least 75%.

R156-64-302f. Qualifications for Licensure - Supervision Requirements.

In accordance with Subsection 58-64-302(2)(h), each deception detection intern supervision agreement shall be in a form that requires a deception detection intern to serve an internship under the direct supervision of an experienced deception detection examiner as follows:

(1) the supervising deception detection examiner shall observe either directly or by video recording a minimum of five complete examinations;

(2) if the deception detection intern is performing post-conviction sex offender testing, the supervising deception detection examiner shall hold a certification for post-conviction sex offender testing by the American Polygraph Association; and

(3) the "Internship Supervision Agreement", as required in Subsection 58-64-302(2)(h), shall be approved by the Division in collaboration with the Board.

R156-64-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 64 is established by rule in Section R156-1-308.

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

R156-64-304. Continuing Education.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition for renewal or reinstatement of a license in the classification of deception detection examiner.

(2) Continuing education shall consist of 60 hours of qualified continuing professional education in each preceding two year period of licensure or expiration of licensure.

(3) If a renewal period is shortened or extended to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-

year period.

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

(a) A minimum of 30 hours shall be from institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction directly relating to deception detection; and

(b) 30 hours may be in the following college courses with one college credit being equal to 15 hours;

(i) psychology;

(ii) physiology;

(iii) anatomy; and

(iv) interview and interrogation techniques.

(5) A deception detection examiner who instructs an approved course shall be given double credit for the first presentation.

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

R156-64-305. Demonstration of Clear Criminal History for Licensees as Renewal Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), an applicant shall demonstrate a clear criminal history as a condition of renewal or reinstatement of license issued under Title 58, Chapter 64 for all classifications under this chapter.

(2) A criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Section R156-1-302 to determine appropriate licensure action.

R156-64-502. Unprofessional Conduct.

(1) "Unprofessional conduct for all classifications under this chapter includes:

(a) conducting an examination if the examinee is not physically present and aware that an examination is being conducted;

(b) publishing, directly or indirectly, or circulating any fraudulent or false statements as to the skill or method of practice of any examiner;

(c) refusing to render deception detection services to or for any person on account of race, color, creed, national origin, sex, or age of such person;

(d) conducting an examination:

(i) on a person who is under the influence of alcohol or drugs; or

(ii) on a person who is under the age of 14 without written permission from the person's parent or guardian;

(e) failing during a pretest interview to specifically inquire whether the individual to be examined is currently receiving or has in the past received medical or psychiatric treatment or consultation;

(f) failing to obtain a release or a physician's statement from the individual being examined if there is any reasonable doubt concerning the individual's ability to safely undergo an examination;

(g) not creating and maintaining a record for every examination administered;

(h) expressing a bias in any manner regarding the truthfulness of the examinee prior to the completion of any testing;

(i) not maintaining records of all deception detection examinations for a minimum of three years; and

(j) failing to conform to the generally accepted and recognized standards and ethics of the profession including

those established by the American Polygraph Association Code of Ethics, dated September 1, 2015, and Standards of Practice, dated September 1, 2015, which are hereby incorporated by reference.

(2) "Unprofessional conduct" specific to deception detection examiners and deception detection examiner interns includes:

(a) not immediately terminating an examination upon request of the examinee;

(b) not conducting a pre-examination review with the examinee where each question is reviewed word for word;

(c) attempting to determine truth or deception on matters or issues not discussed with the examinee during the pre-examination review;

(d) basing decisions concerning truthfulness or deception upon data that fails to meet the following minimum standards:

(i) two charts for a pre-employment exam;

(ii) two charts for a screening examination that is to be followed by a specific issue/single issue examination;

(iii) three repetitions of each question on a directed lie screening exam; or

(iv) three charts for all other exams;

(e) using irrelevant and relevant testing techniques in other than pre-employment and periodic testing, without prior approval of the Division in collaboration with the Board;

(f) using a polygraph instrument that does not record as a minimum:

(i) respiration patterns recorded by two pneumograph components recording thoracic and abdominal patterns;

(ii) electro dermal activity reflecting relative changes in the conductance or resistance of current by the epidermal tissue;

(iii) relative changes in pulse rate, pulse amplitude and relative blood volume by use of a cardiograph;

(iv) continuous physiological recording of sufficient amplitude to be easily readable by the examiner; and

(v) pneumograph and cardiograph tracings no less than one-half inch in amplitude when using an analog polygraph instrument;

(g) conducting in a 24-hour period more than:

(i) five specific issue/single issue examinations;

(ii) five clinical examinations;

(iii) five screening examinations;

(iv) five pre-employment examinations; or

(v) 15 concealed information examinations;

(h) conducting an examination of less than the required duration as follows:

(i) 30 minutes for a concealed information exam;

(ii) 60 minutes for a pre-employment exam; and

(iii) 90 minutes for all other exams;

(i) failing to use an activity sensor in all testing unless the examinee suffers from a diagnosed medical condition that contraindicates its use;

(j) not audibly recording all criminal/specific examinations and informing the examinee of such recording prior to the examination;

(k) during a pre-employment pre-test interview or actual examination, asking any questions concerning the subject's sexual attitudes, political beliefs, union sympathies or religious beliefs unless there is a demonstratable overriding reason;

(l) splitting, or dividing fees received for deception detection services or otherwise paying any person for referring a client;

(m) not providing at least 20 seconds between the beginning of one question and the beginning of the next;

(n) not using a validated scoring method in all examinations;

(o) creating deception detection case files not containing at a minimum the following:

(i) all charts on each subject properly identified by name

and date and if the exam was performed on an analog polygraph instrument, signed by the examinee;

(ii) an index, either chronological or alphabetical, listing:

(A) the names of all persons examined;

(B) the type of exam conducted;

(C) the date of the exam;

(D) the name and license number of the examiner;

(E) the file number in which the records are maintained;

(F) the examiner's written opinion of the test results; and

(G) the time the examination began and ended;

(iii) all written reports or memoranda of verbal reports;

(iv) a list of all questions asked while the instrument was recording;

(v) background information elicited during the pre-test interviews;

(vi) a form signed by the examinee agreeing to take the examination after being informed of his or her right to refuse;

(vii) the following statement, dated and signed by the examinee: "If I have any reason to believe that the examination was not completely impartial, fair and conducted professionally, I am aware that I can report it to the Division of Occupational and Professional Licensing";

(viii) any recordings made of the examination; and

(ix) documentation of an instrument functionality check as mandated by the manufacture of the instrument being used; and

(p) conducting a clinical polygraph examination of a sex offender without holding a current certification from the American Polygraph Association for post-conviction sex offender testing.

KEY: licensing, deception detection examiner, deception detection examination administrator, deception detection intern

September 8, 2016

Notice of Continuation January 31, 2012

58-64-101

58-1-106(1)(a)

58-1-202(1)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-72. Acupuncture Licensing Act Rule.
R156-72-101. Title.**

This rule is known as the "Acupuncture Licensing Act Rule".

R156-72-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 72, as used in this rule:

(1) "Administration", as used in Subsection 58-72-102(4)(b)(ii), means the direct application of an herb, homeopathic, or supplement by ingestion, topical, inhalation, or acupoint injection therapy (AIT), to the body of a patient. Administration does not include: venous injections, immunizations, legend drugs and controlled substances.

(2) "Controlled substance" means a drug or substance as defined in Subsection 58-37-2(1)(f).

(3) "Legend drug" means a prescription drug as defined in Subsections 58-17b-102(30) and (61).

(4) "Insertion of acupuncture needles" means a procedure of acupuncture and oriental medicine which includes but is not limited to trigger point therapy, Ahshi points and dry needling techniques.

(5) "NCCAOM" means the National Commission for the Certification of Acupuncture and Oriental Medicine.

(6) "Modern research" means practicing according to acupuncture and oriental medicine training as recognized through NCCAOM.

(7) "Provision", as used in Subsection 58-72-102(4)(b)(ii), includes procurement of the substances listed in Subsection 58-72-102(4)(b)(ii).

R156-72-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 72.

R156-72-104. 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.

R156-72-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-72-302(5), the examination requirement for licensure is a passing score as determined by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) on all examinations for certification by NCCAOM, formerly National Commission for the Certification of Acupuncturists (NCCA), in acupuncture or oriental medicine.

R156-72-302b. Qualifications for Licensure - Animal Acupuncture.

In accordance with Subsections 58-28-307(12)(d) and 58-72-102(4)(a)(iii), a licensed acupuncturist practicing animal acupuncture must complete 100 hours of animal acupuncture training and education. The training and education shall include:

- (1) completing 50 hours of on the job training under the supervision of a licensed veterinarian;
- (2) completing animal anatomy training; and
- (3) completing the remaining hours in animal specific continuing education.

R156-72-302c. Informed Consent.

In accordance with Subsection 58-72-302(6), in order for patients to give informed consent to treatment, a licensed acupuncturist shall have a patient chart for each patient which shall include:

- (1) a written review of symptoms; and
- (2) a statement, signed by that patient, that consent is given to provide acupuncture treatment.

R156-72-302d. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) failing to maintain office, instruments, equipment, appliances, and supplies in a safe and sanitary condition;
- (2) failing as a licensee to maintain the professional development activity requirements, as required by the NCCAOM;
- (3) failing to abide by and meet standards of the "Code of Ethics" set by NCCAOM, adopted on October 14, 2008, which are hereby incorporated by reference;
- (4) failing to maintain medical records for a ten-year period;
- (5) failing to obtain education and training recognized by NCCAOM if performing acupoint therapy injections; and
- (6) administering venous injections, immunizations, legend drugs and controlled substances.

R156-72-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 72 is established by rule in Section R156-1-308a.

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

(3) In accordance with Section 58-72-303, a licensee must complete 30 continuing education units (CEU) within the two-year renewal period.

KEY: acupuncture, licensing

July 9, 2015

Notice of Continuation September 8, 2016

58-72-101

58-1-106(1)(a)

58-1-202(1)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-75. Genetic Counselors Licensing Act Rule.
R156-75-101. Title.**

This rule is known as the "Genetic Counselors Licensing Act Rule."

R156-75-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 75, as defined or used in this rule:

(1) "Active candidate status", as used in Subsection R156-75-302b(1), describes an individual who has been approved by the American Board of Genetic Counseling (ABGC) to sit for the certification exam in genetic counseling.

(2) "General supervision", as used in Subsection R156-75-302b(2), means the supervisor has the overall responsibility to assess the work of the supervisee including at least twice monthly face to face meetings with chart review and weekly case review. An annual supervision contract signed by the supervisor and supervisee must be on file with both parties.

(3) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 75, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-75-502.

(4) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-75-304.

R156-75-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1) to enable the Division to administer Title 58, Chapter 75.

R156-75-104. 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.

R156-75-302b. Qualifications for Licensure - Temporary License.

In accordance with Subsection 58-75-302(2), the requirements for temporary licensure are established as follows:

(1) An applicant shall meet all qualifications for licensure as established in Subsection 58-75-302(1) with the exception of Subsection 58-75-302(1)(e), and have active candidate status conferred by the ABGC.

(2) An individual practicing under the authority of a temporary license shall practice under the general supervision of a licensed genetic counselor or a licensed physician certified in clinical genetics by the American Board of Medical Genetics.

(3) A temporary license issued under Subsection 58-1-303(1)(a) shall expire on the date a non-temporary license is issued or 18 months after issuance of the temporary license, whichever is earlier. An individual may apply for and obtain a temporary license only one time and it shall not be renewed or extended.

(4) A temporary license shall not be issued if the applicant has failed the ABGC certification examination more than once.

R156-75-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 75 is established by rule in Section R156-1-308a(1).

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

R156-75-304. Continuing Education.

(1) In accordance with Subsections 58-1-203(1)(g), 58-1-308(3)(b) and Section 58-75-303, there is created a continuing education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 75.

(2) Continuing education shall consist of 40 hours (4 CEUs) in each preceding two year licensing cycle and shall be approved for recertification purposes by the ABGC.

(3) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(4) A licensee requesting a waiver of the continuing education requirement shall comply with requirements established by rule in R156-1-308.

R156-75-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any provision of the Code of Ethics established by the National Society of Genetic Counselors (NSGC), revised January 2006, which is hereby adopted and incorporated by reference; and

(2) if licensed as a genetic counselor and contracted to provide general supervision to a temporary genetic counselor, failing to provide such supervision as defined in Subsection R156-75-102(2).

**KEY: licensing, occupational licensing, genetic counselors
June 24, 2013**

58-1-106(1)(a)

Notice of Continuation September 8, 2016

58-1-202(1)(a)

58-75-302(2)

58-75-303(2)

R277. Education, Administration.**R277-109. Legislative Reporting and Accountability.****R277-109-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "LEA" means school districts, charter schools and other public education entities over which the Board has state constitutional authority.
- C. "Legislative statute or directive" means a statute in the Utah Code or legislative intent as documented by legislative records.
- D. "Minimum school program funds (MSP funds)" means the total of state and local funds appropriated for the Minimum School Program to support educational activities in all grades Kindergarten through 12th grade, including the Basic State-Supported School Program, Related to Basic Program, the State-Supported Voted and Board Leeway Levy Programs, and other programs or allocations appropriated by the Legislature in 53A-17a, the Minimum School Program Act.
- E. "Superintendent" means the State Superintendent of Public Instruction who is directed to administer all programs assigned to the Board under Section 53A-1-301(1)(c).

R277-109-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, by Section 53A-1-402(1) which directs the Board to establish rules and minimum standards for the public schools, by Section 53A-1-401(1)(a) which gives the Board general control and supervision of the state's public education system for adoption and enforcement of rules, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities under the constitution and state laws, and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with 53A-1-401(3).
- B. The purpose of this rule is to require the Superintendent to create data collection plans necessary as determined by the Superintendent to fulfill statutory or Board reporting requirements and to require LEAs to submit data upon request to the Superintendent. The rule provides that LEA participation in Minimum School Program funding is conditioned upon LEAs providing complete and accurate data and information to the Superintendent and the Board.

R277-109-3. State Board of Education Direction to State Superintendent and LEA Appeal Process.

- A. The Board expects the Superintendent, in consultation with LEAs, to collect data or prepare data collection reports or plans, as the Board directs or as the Superintendent deems necessary, to fulfill statutory or Board reporting requirements.
- B. The Superintendent is authorized by the Board to assist LEAs to fulfill reporting requests and to complete accountability or reporting plans. The Superintendent's authority extends to sanctioning LEAs, if necessary, for failure to provide required data or reports, up to and including, withholding MSP funds for an LEA's failure to provide complete and accurate data or reports as requested.
- C. The Superintendent or USOE staff, as authorized by the Superintendent, shall provide adequate notice to LEAs of reporting requirements and procedures for providing data in requested formats.
- D. If an LEA does not comply with a data program request or requirement, the Superintendent shall provide adequate and timely notice to the LEA that data was not submitted accurately and completely and LEA has 30 days to respond to the Superintendent's request for data or a required data report.
- E. The Superintendent may impose sanctions for noncompliance up to and including the withholding of MSP funds directly related to the data collection or reporting

requirement. The Superintendent may withhold the program funds related to the requested data report or reporting requirement beginning with the next MSP transfer or beginning with subsequent MSP transfers including MSP funding for a subsequent fiscal year.

F. An LEA may appeal to the Board in writing the superintendent's decision to withhold program funds within 10 calendar days.

G. The Board shall respond to the LEA within 30 calendar days.

H. The Board's response is the final administrative action.

KEY: reporting, accountability**October 11, 2011****Notice of Continuation September 15, 2016****Art X Sec 3****53A-1-402(1)****53A-1-401(1)(a)****53A-1-401(3)**

R277. Education, Administration.**R277-116. Audit Procedure.****R277-116-1. 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) Subsection 63I-5-201(4) which requires the Board to direct the establishment of an internal audit department for programs administered by the entities it governs;
- (c) Subsection 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities;
- (d) Subsection 53A-1-402(1)(e) which directs the Board to develop rules and minimum standards regarding school productivity and cost effectiveness measures, school budget formats, and financial, statistical, and student accounting requirements for the local school districts;
- (e) Section 53A-1-404 which allows the Board to approve auditing standards for school boards;
- (f) Section 53A-1-405 which makes the Board responsible for verifying audits of local school districts; and
- (g) Subsection 53A-17a-147(2) which directs the Board to assess the progress and effectiveness of all programs funded under the State System of Public Education.
- (2) The purpose of this rule is to:
- (a) outline the role of the Audit Director, Superintendent, and agency in the audit process; and
- (b) outline the Board's procedures for audits of agencies.

R277-116-2. Definitions.

- (1) "Agency" means:
- (a) an entity governed by the Board;
- (b) an LEA; or
- (c) a sub-recipient.
- (2) "Audit committee" means a standing committee of members appointed by the Board.
- (3) "Audit Director" means the person who:
- (a) directs the audit program of the Board;
- (b) is appointed by and reports to the audit committee; and
- (c) is independent of the agencies subject to Board audit.
- (4) "Audit plan" means a prioritized list of audits to be performed in the audit program within a specified period of time that is reviewed, approved, and adopted at least annually.
- (5) "Audit program" means a department that provides internal audit services for the Board that is directed by the Audit Director.
- (6) "An entity governed by the Board" means the SCSB, USDB, USOE, or USOR.
- (7) "Draft audit report" means a draft audit report compiled by the Audit Director that is classified as protected under Title 63G, Chapter 2, Part 3, Section 305, Protected records.
- (8) "Final audit report" means a draft audit report that is approved by the audit committee and the Board as a final audit report that is classified as public under Title 63G, Chapter 2, Part 3, Section 301, Public records.
- (9) "Sub-recipient" means any entity that receives funds from an entity governed by the Board.

R277-116-3. Audit Director Authority and Responsibilities.

The Audit Director shall:

- (1) direct the audit program:
- (a) as approved by the Board and audit committee by objectively evaluating the effectiveness and efficiency of the operations of the agency being audited;
- (b) in accordance with the current International Standards for the Professional Practice of Internal Auditing; and
- (c) as otherwise required by the Board;
- (2) ensure that collectively the audit department possesses the knowledge, skills, and experience essential to the practices

of the profession and are proficient in applying internal auditing standards, procedures, and techniques;

- (3) employ:
- (a) a sufficient number of professional and support staff to implement an effective internal audit program; and
- (b) audit staff who are qualified in disciplines that include:
- (i) accounting;
- (ii) business management;
- (iii) public administration;
- (iv) human resource management;
- (v) economics;
- (vi) finance;
- (vii) statistics;
- (viii) electronic data processing; or
- (ix) engineering;
- (4) inform the audit committee if additional professional and support staff are necessary to implement an effective internal audit program;
- (5) base compensation, training, job tenure, and advancement of internal auditing staff on job performance;
- (6) propose audit rules, policies, and amendments, for approval and adoption by the Board that maintain staff independence from operational and management responsibilities that would impair staff's ability to make independent audits of an agency;
- (7) develop and recommend an audit plan to the Board and the audit committee based on the findings of periodic risk assessments, audits, and budget;
- (8) perform an audit of a special program, activity, function, or organizational unit of an agency at the direction of the Board or the audit committee with one or more objectives, including:
- (a) to verify the accuracy and reliability of agency records;
- (b) to assess compliance with management policies, plans, procedures, and regulations;
- (c) to assess compliance with applicable laws, rules, and regulations;
- (d) to evaluate the efficient and effective use of agency resources;
- (e) to verify the appropriate protection of agency assets; and
- (f) review and evaluate internal controls over the agency's accounting systems, administrative systems, electronic data processing systems, and all other major systems necessary to ensure the fiscal and administrative accountability of the state agency;
- (9) determine the assignment and scope of the audits;
- (10) periodically discuss relevant matters with the audit committee including whether there are any restrictions on the scope of the audits;
- (11) submit draft audit reports directly to the Board and to the audit committee;
- (12) receive comments from the Board and responses from the Superintendent on the draft audit report;
- (13) edit draft audit report based upon the comments and responses received;
- (14) resubmit a draft audit report to the Board and audit committee:
- (a) after receipt of comments from the Board and responses from the Superintendent; and
- (b) until a draft audit report is approved and adopted as a final audit report by the Board;
- (15) report monthly to the audit committee, or as otherwise directed by the audit committee, including:
- (a) reviewing current audits being performed both internally and externally;
- (b) the scope of the internal and external audits;
- (c) status of internal and external audits;
- (d) follow up draft audit reports; and

(e) draft audit reports for final review and recommendation;

(16) conduct an annual quality assurance review of the audit program with the audit committee;

(17) personally or through a designee, report quarterly to the Board, or as otherwise directed by the Board;

(18) personally or through a designee, attend all Board meetings;

(19) report to the Board, within a reasonable time of discovering, issues that have the potential of exposing the Board, Superintendent, or an agency to liability or litigation;

(20) maintain the classification of any public record consistent with GRAMA;

(21) be subject to the same penalties under GRAMA as the custodian of a public record; and

(22) ensure that significant audit matters that cannot be appropriately addressed by the audit program are referred to either the Office of Legislative Auditor General or the Office of the State Auditor.

R277-116-4. Superintendent Authority and Responsibilities.

The Superintendent shall establish the audit program by:

(1) providing resources necessary to conduct the audit program including adequate funds, staff, tools, and space to support the audit program;

(2) facilitating communications with those charged with governance, management, and staff as requested by the Audit Director or the audit committee to ensure the access necessary to perform an audit;

(3) ensuring access to all personnel, records, data, and other agency information that the Audit Director or staff consider necessary to carry out their assigned duties;

(4) notifying the Audit Director of external audits of entities governed by the Board;

(5) notifying the agency that the Audit Director shall be the liaison for an external audit; and

(6) supporting the audit program as otherwise requested by the audit committee or Audit Director.

R277-116-5. Agency Authority and Responsibilities.

The agency shall wholly cooperate and provide the Audit Director and the internal audit staff all:

(1) necessary access to those charged with governance, management, and staff; and

(2) personnel, records, data, and other agency information that the Audit Director or staff consider necessary to carry out their assigned duties.

R277-116-6. Audit Plans.

(1) The audit plan prepared by the Audit Director shall:

(a) identify the individual audits to be conducted during each year;

(b) identify the related resources to be devoted to each of the respective audits;

(c) ensure that internal controls are reviewed periodically as determined by the Board or by the audit committee; and

(d) ensure that audits that evaluate the efficient and effective use of agency resources are adequately represented in the audit plan.

(2) Upon request, the Audit Director shall make a copy of the approved and adopted audit plan available to the state auditor, legislative auditor, or other appropriate external auditors to assist in planning and coordination of any external financial, compliance, electronic data processing, or performance audit.

R277-116-7. Audit Process.

(1) The Audit Director shall develop and recommend an audit plan to the Board and the audit committee based on the

findings of periodic risk assessments and audits.

(2) Once approved and adopted by the Board, the Audit Director shall implement the audit plan.

(3) As requested by the audit committee or Audit Director, the Superintendent shall establish the audit program.

(4) The agency shall provide all information to the Audit Director and audit staff for the audit to be timely conducted.

(5) After conducting an audit, the Audit Director shall submit a draft audit report to:

(a) the audit committee;

(b) the Board; and

(c) the Superintendent for response or comment.

(6) Within fourteen days of the Audit Director's submission of the draft audit report to the Board and audit committee, the Superintendent shall either:

(a) provide a written response or comment to the Board, audit committee, and Audit Director to the draft audit report; or

(b) file a written request for an extension to the audit committee setting forth:

(i) the steps necessary to investigate and prepare a response to the draft audit report;

(ii) the time necessary to perform each step; and

(iii) the latest date that the Superintendent's written response or comment will be given to the Board, audit committee and Audit Director.

(7) Upon receiving written response and comment from the Superintendent, the Audit Director shall:

(a) incorporate into the draft audit report the written responses and comments, if any, received from the Board, the audit committee, and the Superintendent; and

(b) submit the amended draft audit report to the audit committee for recommendation.

(8) The audit committee may:

(a) recommend an amended draft audit report for approval and adoption; or

(b) send the amended draft audit report back to the Audit Director with instructions for additional review.

(9) Upon recommendation from the audit committee on the amended draft audit report, the Board may:

(a) approve and adopt an amended draft audit report as the final audit report; or

(b) send the amended draft audit report back to the audit committee with instructions for additional review.

R277-116-8. Audit Reports.

(1) An audit report prepared by the Audit Director and staff shall be based upon audits of agency programs, activities, and functions that include:

(a) findings based upon the audit scope; and

(b) one or more of the following objectives:

(i) verification of the accuracy and reliability of agency records;

(ii) assessment of an agency's compliance with management policies, plans, procedures, and regulations;

(iii) assessment of an agency's compliance with applicable laws, rules, and regulations;

(iv) evaluation of the efficient and effective use of agency resources;

(v) verification of the appropriate protection of agency assets;

(vi) furnishing independent analyses, appraisals, and recommendations that may, depending upon the audit scope, identify:

(A) the adequacy of an agency's systems of internal control;

(B) the efficiency and effectiveness of agency management in carrying out assigned responsibilities; and

(C) the agency's compliance with applicable laws, rules, and regulations;

(vii) review and evaluation of internal controls over the agency's accounting systems, administrative systems, electronic data processing systems, and all other major systems necessary to ensure the fiscal and administrative accountability of the agency; and

(viii) identification of abuse, illegal acts, errors, omissions, or conflicts of interest.

(2) An audit report prepared by the Audit Director and staff shall include a statement that the audit was conducted according to International Standards for the Professional Practice of Internal Auditing.

(3) The Audit Director shall provide, upon written request, a copy of an audit report to the Office of Legislative Auditor General or the Office of the State Auditor.

(4) The Audit Director shall ensure that public release of a final audit report complies with the conditions specified by the state laws and rules governing the audited agency.

KEY: educational administration

October 8, 2015

Art X Sec 3

Notice of Continuation September 15, 2016 53A-1-401(3)

53A-1-405

53A-1-402(1)(e)

53A-17a-147(2)

63I-5-101 through 401

R277. Education, Administration.**R277-600. Student Transportation Standards and Procedures.****R277-600-1. Definitions.**

- A. "ADA" means average daily attendance.
- B. "ADM" means average daily membership.
- C. "AFR" means a school district's annual financial report, one component of which is the AFR for all pupil transportation costs.
- D. "Approved costs" means the Board approved costs of transporting eligible students from home to school to home once each day, after-school routes, approved routes for students with disabilities and vocational students attending school outside their regularly assigned attendance boundary, and a portion of the bus purchase prices. All approved costs are adjusted by the USOE consistent with a Board-approved formula per the annual legislative transportation appropriation.
- E. "Board" means the Utah State Board of Education.
- F. "Bus route miles" means operating a bus with passengers.
- G. "Deadhead" means operating a bus when no passengers are on board.
- H. "Extended school year (ESY)" means an extension of the school district or charter school traditional school year to provide special education and related services to a student with a disability, in accordance with the student's IEP, and at no cost to the student's parents. ESY services shall meet the standards of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3) and the State Board of Education Special Education Rules.
- I. "Hazardous" means danger or potential danger which may result in injury or death.
- J. "IDEA" means the Individuals with Disabilities Education Act, Title 1, Part A, Section 602.
- K. "IEP" (individualized education program) means a written statement for a student with a disability that is developed and implemented under CFR Sections 300.340 through 300.347.
- L. "Local board" means the local school board of education.
- M. "M.P.V." means multipurpose passenger vehicle: any motor vehicle with less than 10 passenger positions, including the driver, which cannot be certified as a bus.
- N. "Out-of-pocket expense" means gasoline, oil, and tire expenses.
- O. "USOE" means the Utah State Office of Education.

R277-600-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public schools in the Board, by Section 53A-1-402(1)(d) which directs the Board to establish rules for bus routes, bus safety and other transportation needs and by Section 53A-17a-126 and 127 which provides for distribution of funds for transportation of public school students and disability standards for student bus riders.

B. The purpose of this rule is to specify the standards under which school districts may qualify for and receive state transportation funds.

R277-600-3. General Provisions.

A. State transportation funds are used to reimburse school districts for the costs reasonably related to transporting students to and from school. The Board defines the limits of school district transportation costs reimbursable by state funds in a manner that encourages safety, economy, and efficiency.

B. Allowable transportation costs are divided into two categories. Expenditures for regular bus routes established by the school district, and approved by the state, are A category costs. Other methods of transporting students to and from

school are B category costs. The Board devises a formula to determine the reimbursement rate for A category costs consistent with Section 53A-17a-127(3). B category costs are approved on a line-by-line basis by the USOE after comparing the costs submitted by a school district with the costs of alternative methods of performing the designated function(s) and subject to adjustment per legislative appropriation.

C. The USOE shall develop a uniform accounting procedure for the financial reporting of transportation costs. The procedure shall specify the methods used to calculate allowable transportation costs. The USOE shall also develop uniform forms for the administration of the program.

D. All student transportation costs shall be recorded. Accurate mileage, minute, and trip records shall be maintained. Records and financial worksheets shall be maintained during the fiscal year for audit purposes.

R277-600-4. Eligibility.

A. State transportation funds shall be used only for transporting eligible students.

B. Transportation eligibility for elementary students (K-6) and secondary students (7-12) is determined in accordance with the mileage from home specified in Section 53A-17a-127(1) and (2) to the school attended by assignment of the local board.

C. A student whose IEP identifies transportation as a necessary related service is eligible for transportation regardless of distance from the school attended by assignment of the local board.

D. Students who attend school for at least one-half day at a location other than the local board designated school are expected to walk distances up to 1 and one-half miles.

E. A school district that implements double sessions as an alternative to new building construction may transport, one-way to or from school, with Board approval, affected elementary students residing less than one and one-half miles from school, if the local board determines the transportation would improve safety affected by darkness or other hazardous conditions.

F. The distance from home to school is determined as follows: From the center of the public route (road, thoroughfare, walkway, or highway) open to public use, opposite the regular entrance of the one where the pupil is living, over the nearest public route (thoroughfare, road, walkway, or highway) open regularly for use by the public, to the center of the public route (thoroughfare, road, walkway, or highway) open to public use, opposite the nearest public entrance to the school grounds which the student is attending.

R277-600-5. Student with Disabilities Transportation.

A. Students with disabilities are transported on regular buses and regular routes whenever possible, unless the IEP team determines otherwise. School districts may request approval, prior to providing transportation, for reimbursement for transporting students with disabilities who cannot be safely transported on regular school bus runs.

B. School districts may be reimbursed for the costs of transporting or for alternative transportation for students with disabilities whose severity of disability, or combination of disabilities, necessitates special transportation.

C. During the regular school year, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.

D. During the extended school year (ESY), an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of ten days with primarily the same group of students.

E. Transportation is provided by the Utah Schools for the Deaf and the Blind for students who are transported to its self-contained classes. Exceptions may be approved by the USOE.

R277-600-6. Bus Route Approval.

A. Transportation is over routes proposed by local boards and approved by the USOE. Information requested by the USOE shall be provided prior to approval of a route. During the regular school year, an eligible route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students. The USOE shall not approve a route for reimbursement if an equitable student transportation allowance or a subsistence allowance for the necessary transportation is more cost-effective. The USOE may approve exceptions. A route shall:

- (1) traverse the most direct public route;
- (2) be reasonably cost-effective related to other feasible alternatives;
- (3) provide adequate safety for students;
- (4) traverse roads that are constructed and maintained in a manner that does not cause property damage; and
- (5) include an economically appropriate number of students.

B. The minimum number of general education students required to establish a route is ten; the minimum number of students with disabilities is five. A route may be established for fewer students upon special permission of the State Superintendent.

C. The school district designates safe areas for bus stops.

(1) To promote efficiency, the USOE approved minimum distance between bus stops is 3/10 of a mile. The USOE may make exceptions for shorter distances between bus stops for student safety.

(2) Bus routes shall avoid, whenever possible, bus stops on dead-end roads.

(3) Students are responsible for their own transportation to bus stops up to one and one-half miles from home.

(4) Students with disabilities are responsible for their own transportation to bus stops unless the IEP team determines otherwise.

D. Changes made by school districts in existing routes or the addition of new routes shall be reported to the USOE as they occur. The USOE shall review and may refuse to fund route changes.

E. The USOE may reimburse a school district for transporting another district's students across school district boundaries so long as:

- (1) the route promotes efficient transportation for both districts;
- (2) the route serves a group or community of students and families rather than a single student or a single family;
- (3) the local boards of both participating districts vote in an open meeting that students who reside in one district can be better and more economically served by another district; and
- (4) both districts and the USOE maintain documentation annually of the boards' votes and the map of the approved route.

F. Schools may transport eligible students home after school activities held at the students' school of regular attendance and within a reasonable time period after the close of the regular school day and receive approved route mileage.

G. The USOE may approve atypical routes as alternatives to building construction if routes are needed to allow more efficient school district use of school facilities. Building construction alternatives include elementary double sessions, year-round school, and attendance across school district boundaries.

H.(1) School districts may use State Guarantee Transportation Levy or local transportation funds to transport students across state lines or out-of-state for school sponsored activities or required field trips if:

- (a) the local board has a policy that includes approval of trips at the appropriate administrative level;
- (b) the school or school district has considered the purpose

of the trip or activity and any competing risk or liability;

(c) given the distance, purpose and length of the trip, the school district has determined that the use of a publicly owned school bus is most appropriate for the trip or activity; and

(d) the local board has consulted with State Risk Management.

(2) If school bus routes transport students across Utah state lines or outside of Utah for required to and from routes, routes are reimbursable providing school districts maintain documentation that the routes are necessary, or are more cost-effective, or provide greater safety for students than in-state routes.

R277-600-7. Alternative Transportation.

Bus routes that involve a large number of deadhead miles will be analyzed by the USOE for reduction or to determine if an alternative method of transporting students is more efficient. Approved alternatives include the following:

A. The costs incurred in transporting eligible pupils in a school district multipurpose passenger vehicle (M.P.V.) are approved costs as long as the costs demonstrate efficiency.

B(1) The costs incurred in paying eligible students an allowance in lieu of school district-supplied transportation are approved costs. A student is reimbursed for the mileage to the bus stop or school, whichever is closer, to the student's home. The allowance shall not be less than the standard mileage rate deduction permitted by the United States Internal Revenue Service for charitable contributions, nor greater than the reimbursement allowance permitted by the Utah Department of Administrative Services for use of privately owned vehicles set forth in the Utah Travel Regulations;

(2) a student mileage allowance is made to only one student per family for each trip that is necessary for all the students within a family to attend school. If siblings are on different school schedules or ride buses that are on significantly different schedules, multiple students within a family may claim and be paid for student mileage allowances;

(3) if a student or the student's parent is unable to provide private transportation, with prior state approval, an amount equivalent to the student allowance may be paid to the school district to help pay the costs of school district transportation;

(4) the student's mileage shall be measured and certified in school district records. The student's ADA, as entered in school records, is used to determine the student's attendance.

C(1) The cost incurred in providing a subsistence allowance is an approved cost. If a student lives more than 60 miles (one way) on well-maintained roads from the student's assigned school, a parent may be reimbursed for the student's room and board if the student relocates temporarily to reside in close proximity to the student's assigned school. Payment shall not exceed the Substitute Care Rate for Family Services for the current fiscal year. Adjustments for changes made in the rate during the year are included in the allowance. In addition to the reimbursement for room and board, the subsistence allowance includes the costs of 18 round trips per year.

(2) A subsistence allowance is not applicable to a parent who maintains a separate home during the school year for the convenience of the family. A parent's primary residence during the school year is the residence of the child.

D. Contracting or leasing for pupil transportation

(1) The cost incurred in engaging in a contract or leasing for transportation is an approved cost at the prorated amount available to school districts.

(2) Reimbursements for school districts using a leasing arrangement are determined in accordance with the comparable cost for the school district to operate its own transportation.

(3) Under a contract or lease, the school district's transportation administrator's time shall not exceed one percent of the commercial contract cost.

(4) Eligible student counts, bus route mileage, bus route minutes, service to students with disabilities and bus inventory data are required as if the school district operated its own transportation.

R277-600-8. Other Reimbursable Expenses.

State transportation funds at the USOE-determined prorated amount may reimburse a school district for the following costs:

A. Salaries of clerks, secretaries, trainers, drivers, a supervisor, mechanics and other personnel necessary to operate the transportation program:

(1) a full time supervisor may be paid at the same rate as other professional directors in the school district. The supervisor's salary shall be commensurate with the number of buses, number of eligible students transported, and total responsibility relative to other school district supervisory functions. A school district may claim a percentage of the school district superintendent's or other supervisor's salary for reimbursement if the school district's eligibility count is less than 600 and a verifiable record of administrative time spent in the transportation operation is maintained;

(2) The wage time for bus drivers includes to and from school time: ten minute pre-trip inspection, actual driving time, ten minute post-trip inspection and bus cleanup, and 10 minute bus servicing and fueling;

B. Only a proportionate amount of a superintendent's or supervisor's employee benefits (health, accident, life insurance) may be paid from the school district's transportation fund;

C. Purchased property services;

D. Property, comprehensive, and liability insurance;

E. Communication expenses and travel for supervisors to workshops or the national convention;

F. Supplies and materials for vehicles, the school district transportation office and the garage;

G. Depreciation: The USOE shall provide an annual formula for school bus depreciation;

H. Training expenses to complete bus driver instruction and certification required by the Board; and

I. Other related costs approved by the USOE which may include additional bus driver training.

R277-600-9. Non-reimbursable Expenses.

A. AFR for all pupil transportation costs shall only include pupil transportation costs and other school district expenditures directly related to pupil transportation.

B. In determining expenditures for eligible to and from school transportation, all related costs shall be reduced on a pro rata basis for the miles not connected with approved costs.

C. Expenses determined by the USOE as not directly related to transportation of eligible students to and from school shall not be reimbursable.

D. Local boards may determine appropriate non-school uses of school buses. Local boards may lease/rent public school buses to federal, state, county, or municipal entities, and those insured by State Risk Management or to non-government entities or to those not insured through State Risk Management. In making these determinations, local boards shall:

(1) require full cost reimbursement for any non-public school use including:

(a) cost per mile;

(b) cost per minute;

(c) bus depreciation.

(2) require documentation from the non-school user of insurance through State Risk Management or private insurance coverage and a fully executed agreement for full release of indemnification;

(3) require that any non-school use is revenue neutral; and

(4) consult with State Risk Management to determine

adequacy of documentation of insurance and indemnity for any entity requesting use or rental of publicly owned school buses.

E. If a local board approves the use of school buses by a non-governmental entity or an entity not insured through State Risk Management, that use shall be approved in an open board meeting.

F. In the event of an emergency, local, regional, state or federal authorities may request the use of school buses or school bus drivers or both for the period of the emergency. The local board shall grant the request so long as the use can be accommodated consistent with continuing student transportation and student safety requirements.

R277-600-10. Board Local Levy.

A. Costs for school district transportation of students which are not reimbursable may be paid for from general school district funds or from the proceeds of the Board Local Levy authorized under Section 53A-17a-164.

B. The revenue from the Board Local Levy may be used for transporting students and for the replacement of school buses.

C. A local board may approve the transportation of students in areas where walking constitutes a hazardous condition from general local board funds or from the Board Local Levy.

(1) Hazardous walking conditions shall be determined by an analysis by the local board of the following factors:

(a) volume, type, and speed of vehicular traffic;

(b) age and condition of students traversing the area;

(c) condition of the roadway, sidewalks and applicable means of access in the area; and

(d) environmental conditions.

(2) A local board may designate hazardous conditions.

D. Guarantee Transportation Levy

(1) Appropriated funds under Section 53A-17a-127(7) shall be distributed according to each school district's proportional share of its qualifying state contribution.

(2) The qualifying state contribution for school districts shall be the difference between 85 percent of the average state cost per qualifying mile multiplied by the number of qualifying miles and the current funds raised per school district by an amount of revenue equal to at least .0002 per dollar of taxable value of the school district's Board Local Levy under Section 53A-17a-164.

R277-600-11. Exceptions.

A. When undue hardships and inequities are created through exact application of these standards, school districts may request an exception to these rules from the State Superintendent on individual cases. Such hardships or inequities may include written evidence demonstrating that no significant increased costs (less than one percent of a school district's transportation budget) is incurred due to a waiver or that students cannot be provided services consistent with the law due to transportation exigencies. The State Superintendent may consult with the Pupil Transportation Advisory Committee, designated in Section 53A-17a-127(5), in considering the exemption.

B(1) a school district shall not be penalized in the computation of its state allocation for the presence on an approved to and from school route of an ineligible student who does not create an appreciable increase in the cost of the route;

(2) there is an appreciable increase in cost if, because of the presence of ineligible students, any of the following occurs:

(a) another route is required;

(b) a larger or additional bus is required;

(c) a route's mileage is increased;

(d) the number of pick-up points below the mileage limits for eligible students exceeds one;

(e) significant additional time is required to complete a route.

(3) ineligible students may ride buses on a space available basis. An eligible student may not be displaced or required to stand in order to make room for an ineligible student.

KEY: school buses, school transportation

May 16, 2013

Art X Sec 3

Notice of Continuation September 15, 2016 53A-1-402(1)(d)

53A-17a-126 and 127

R277. Education, Administration.**R277-603. Autism Awareness Restricted Account Distribution.****R277-603-1. Definitions.**

- A. "Autism Awareness Account" means the account established under Section 53A-1-304 and funded under Section 41-1a-418 (1)(e)(xvii).
- B. "Board" means the Utah State Board of Education.
- C. "Distribute funds," for purposes of this rule, means a process, including timelines and a standard application, to eligible organizations.
- D. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee;
- E. "USOE" means the Utah State Office of Education.

R277-603-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-304 which authorizes the Superintendent to distribute autism awareness funds appropriated by the Legislature, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to provide procedures, timelines and accountability for distribution of funds received in the Autism Awareness Restricted Account and subsequently appropriated by the Legislature to eligible organizations.

R277-603-3. Procedures.

- A. The Superintendent shall provide an application for organizations that meet the qualifications of Section 53A-1-304(4) to apply for available Autism Awareness Account funds to the extent of the legislative appropriation.
- B. The Superintendent shall provide for review of applications and selection of qualified recipients.
- C. Applications shall include a budget section, a plan for use of the funds by eligible organizations consistent with Section 53A-1-304(5)(b) and other information as requested.
- D. The Superintendent shall provide for distribution of funds, to the extent of funds appropriated by the Legislature, beginning, July 1, 2011.

R277-603-4. Timelines.

- A. The Superintendent shall announce the availability of funds at least annually, by March 15 of each year.
- B. Applicants may apply for funds on forms available from the USOE.
- C. Applications shall be due June 5 annually.
- D. Applicants identified for funding shall be notified no later than July 1 annually.
- E. The USOE shall distribute funds annually in July.
- F. For FY 2012, following the Board's approval of R277-603, applications shall be available, reviewed, and funds distributed as soon as possible.

R277-603-5. Accountability.

- A. The Superintendent shall require funded organizations to complete a year-end report explaining and documenting the use of funds consistent with the law and this rule.
- B. The year-end report may require an independent audit or review of a funded program.

**KEY: autism awareness, restricted account
November 8, 2011
Notice of Continuation September 15, 2016**

**Art X Sec 3
53A-1-304
53A-1-401(3)**

R277. Education, Administration.**R277-708. Enhancement for At-Risk Students Program.****R277-708-1. Definitions.**

A. "At-risk of academic failure" for purposes of this rule, means students in public schools grades K-12 who have one or more of the following risk factors as defined under R277-708-1: (1) Low performance on U-PASS tests; (2) Poverty; (3) Limited English Proficiency; and (4) Mobility.

B. "Available funds" for purposes of this rule means the total funds appropriated for Enhancement for At Risk Students Program less funding designated for Gang Prevention under Section 53A-17a-166(1)(b)(i).

C. "Board" means the Utah State Board of Education.

D. "Data Clearinghouse" means the electronic data collection system used by the USOE to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

E. "LEA share" for purposes of determining funding under this rule, means the percentage of students from an LEA who qualify under the classifications of: low performing on U-PASS, poverty, mobility, and Limited English Proficiency compared to the total count for the state of Utah from the previous school year.

F. "Limited English Proficiency (LEP)" means the total number of English language (EL) students in an LEA from the previous school year. This count includes:

(1) the number of EL students receiving a score of 1-3 on the English language proficiency assessment; and

(2) the number of students classified as previously-EL who are monitored for two years once classified as English Proficient based on a score of 4 or 5 on the English language proficiency assessment.

G. "Local Education Agency (LEA)" means a public school district or charter school primarily intended to serve students grades K through 12.

H. "Low performance on U-PASS tests" means the unduplicated count of students from an LEA scoring below proficient on the Student Assessment of Growth and Excellence (SAGE) or adaptive testing for Reading/Language Arts from the previous school year.

I. "Mobility" means the number of students enrolled less than 160 days or its equivalent in one school within one school year.

J. "Poverty" means the total number of students in an LEA reported as economically disadvantaged using federal child nutrition income eligibility guidelines for free or reduced-priced under the federal school lunch program from the official October 1 enrollment count from the previous school year.

K. "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the Utah State Office of Education by which local education agencies submit plans and budgets for approval of the Utah State Office of Education.

L. "USOE" means the Utah State Office of Education.

R277-708-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, Section 53A-17a-166 which directs the Board to develop a funding formula, develop performance criteria, administer the program, distribute the appropriation, monitor, and report the effectiveness of the Enhancement for At-Risk Students program, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish criteria and procedures for distributing at-risk student program funds to LEAs. The intent of the rule and the legislative appropriation is

to improve academic achievement of students who are at risk of academic failure.

R277-708-3. Applications and Distribution of Funds.

A. Awards shall be made to local education agencies.

B. LEAs shall submit applications annually by November 1 to the USOE through the UCA.

C. LEAs shall receive funding based on an equal weighting of:

(1) low performance on U-PASS tests;

(2) poverty;

(3) mobility; and

(4) limited English proficiency as outlined in 53A-17a-166.

D. LEA allocations shall be based on the certified data from the Data Clearinghouse from the most recent school year for which data is complete and available.

E. Funding formula

(1) LEA base: the USOE shall annually calculate four percent of the state appropriation of the Enhancement for At-Risk Students funding available for LEA grants to provide a base amount to LEAs. This base amount shall be equally divided among all eligible LEAs.

(2) LEAs with high poverty schools: the USOE shall annually calculate twenty percent of the state appropriation of the Enhancement for At-Risk Students funding for LEA grants to provide a targeted amount to LEAs with traditional elementary and secondary schools with at least 75 percent poverty. This targeted amount shall be divided among eligible LEAs based on the number of traditional schools with at least 75 percent poverty within the LEA.

(3) Of the funds remaining, the USOE shall determine the LEA share based on the LEA's percentage of students with at-risk factors for the state.

(4) For each LEA, the USOE shall use data from the USOE Data Warehouse from the previous school year to determine the students who qualify under the following definitions:

(a) Low performance on U-PASS tests;

(b) Poverty;

(c) Mobility; and

(d) Limited English Proficiency.

(5) The LEA share shall equal the LEA's statewide proportionate share of qualifying students with at-risk factors times the amount of funds available for distribution.

(6) 2011-2012 funding transition: for the 2011-2012 school year, the USOE shall implement formula adjustments to ensure that no LEA receives less than 65 percent of the funds under the Enhancement for At-Risk Students Program than the LEA received during the 2010-2011 school year under the funds available from the state program that were repealed as part of the enactment of the new Enhancement for At-Risk Students Program.

F. LEAs that qualify for funding and the level of the LEA funding shall be notified annually by June 30.

G. LEAs may use funds for activities that support academic achievement of students who are at risk of academic failure; the LEA shall provide:

(1) as part of the UCA process:

(a) specific goals related to increased academic achievement of students at-risk of academic failure; and

(b) proposed activities that are directly tied to the LEA's plan to increase student achievement;

(2) an annual report of the use of funds; and

(3) an annual report of program effectiveness based on USOE-defined performance criteria.

R277-708-4. Oversight: Monitoring, Evaluation and Reports.

A. The Board may designate no more than one percent of the total appropriation from the Enhancement for At-Risk Students program to be used specifically by the USOE for oversight, monitoring and evaluation of LEAs' implementation of the program and their compliance with the law and this rule.

B. Performance Criteria: Each LEA that receives funding shall submit an annual evaluation report to the USOE consistent with Section 53A-17a-166. The report shall include the following performance criteria for students at-risk of academic failure:

- (1) student attendance information, as defined by the USOE;
- (2) graduation rate;
- (3) gains in language proficiency as measured by the English language proficiency assessment;
- (4) gains in reading/language Arts proficiency as measured by SAGE; and
- (5) gains in mathematics proficiency as measured by SAGE.

C. The Utah State Office of Education shall submit an annual report on program effectiveness to the Public Education Appropriations Subcommittee of the Utah State Legislature.

R277-708-5. Gang Prevention and Intervention Funds.

A. Consistent with Section 53A-17a-166(1)(b), the Board shall distribute funding to LEAs for gang prevention and intervention.

B. LEAs desiring to receive gang prevention and intervention funds shall submit proposals consistent with R277-436.

KEY: students at risk

October 11, 2011

Notice of Continuation September 15, 2016

Art X Sec 3

53A-17a-166

53A-1-401(3)

R277. Education, Administration.**R277-914. Career and Technical Student Organizations.****R277-914-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Career and technical education (CTE)" means organized educational programs which prepare individuals for college and careers in occupations where entry requirements generally do not require an advanced degree. These programs provide all students access to high school college and career Pathways, driven by a student education occupation plan (SEOP), through rigorous technical, academic, and employability instruction, culminating in essential life skills, certified occupational skills, employment and continued post-secondary education. Areas of study include agriculture; business; family and consumer sciences; health science; information technology; marketing; skilled and technical sciences; and technology and engineering education.

C. "Career and technical student organization (CTSO)" means a designated student organization placing emphasis on leadership and skill development; these organizations are integral to the career and technical programs at the secondary/postsecondary levels of instruction. Organizations have local, state and national affiliation.

D. "CTSO advisors" means professionals in identified program areas designated by USOE CTE staff to direct career and technical student leadership organizations statewide. The CTSO advisor is most commonly a teacher in the program area and is paid a stipend by the USOE to administer and advise in a specific program area.

E. "One percent (1%) fiscal accounts" means one percent (1%) of the CTE add-on fund designated to be used for the management and operation of CTSOs at the state and local level. The funds designated for management of student organizations at the state level are dispersed by the designated state fiscal agent for CTSOs through separate accounts for salaries, operating expenses and national conference travel.

F. "Program specialist" means a CTE specialist, typically a licensed educator, who has been assigned to work with a particular curriculum area. Examples are agriculture, business education, and health science.

G. "USOE" means the Utah State Office of Education.

R277-914-2. Authority and Purpose.

A. This rule is authorized by Section 53A-15-202(1) which directs the Board to establish minimum standards for career and technical programs in the public education system; Section 53A-15-202(3) which directs the Board to cooperate with federal and state governments to administer programs which promote and maintain career and technical education, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to make CTSOs fiscally accountable to the Board and to provide procedures and supervision toward that end.

R277-914-3. Student Organization Advisory Boards.

A. Each student organization designated by the USOE State Director for CTE shall establish a statewide advisory board of not less than three members, one of which must be the USOE program specialist.

B. Each program area CTSO shall develop and follow organization by-laws.

C. Each CTSO advisory board shall have advisory fiscal oversight for the organization.

D. Each CTSO advisory board shall conduct an annual performance evaluation of the work performed by the respective CTSO advisor.

R277-914-4. Fiscal Oversight of Student Organizations.

A. The CTSO advisory boards shall act consistent with fiscal procedures provided by the USOE State Director for CTE or the State Director's designee.

B. Each CTSO advisory board shall submit all required financial records for auditing on a schedule established by the State Director for CTE.

C. Individual CTSO financial records shall be submitted for auditing whenever there is a change in the CTSO advisor, if requested by the State Director for CTE.

D. The State Director for CTE shall designate a school district or institution to act as the fiscal agent for the CTSO fiscal accounts.

E. The State Director for CTE or designee shall work with the designated fiscal agent to provide oversight and accounting procedures for the CTSO fiscal accounts.

**KEY: secondary education, career and technical education*
December 8, 2011 53A-15-202(1)
Notice of Continuation September 15, 2016 53A-15-202 (3)
53A-1-401(3)**

R307. Environmental Quality, Air Quality.**R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit.****R307-121-1. Authorization and Purpose.**

(1) This rule is authorized by Sections 59-7-605 and 59-10-1009. These statutes establish criteria and definitions used to determine eligibility for an income tax credit.

(2) R307-121 establishes procedures to provide proof of purchase or lease, in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), to the director for an OEM vehicle, qualifying electric motorcycle, or the conversion of a motor vehicle or special mobile equipment for which an income tax credit is allowed under Sections 59-7-605 or 59-10-1009.

R307-121-2. Definitions.

The following additional definitions apply to R307-121.

"Air quality standards" means air quality standards as defined in Subsection 59-7-605(1)(a) and 59-10-1009(1)(a).

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package that may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that motor vehicle or equipment eligible for the tax credit.

"Motor Vehicle" means a motor vehicle as defined in 41-1a-102.

"Original equipment manufacturer(OEM) vehicle" means original equipment manufacturer(OEM) as defined in Subsection 19-1-402(8).

"Original purchase" means original purchase as defined in Subsection 59-7-605(1)(g) and 59-10-1009(1)(g).

"Qualifying electric motorcycle" means qualifying electric motorcycle as defined in 59-7-605(1)(h) or 59-10-1009(1)(h).

"Qualifying electric vehicle" means qualifying electric vehicle as defined in 59-7-605(1)(i) or 59-10-1009(1)(i).

"Qualifying plug-in hybrid vehicle" means qualifying plug-in hybrid vehicle as defined in 59-7-605(1)(j) or 59-10-1009(1)(j).

"Window Sticker" means the label required by United States Code Title 15 Sections 1231 and 1232, as effective January 3, 2012.

R307-121-3. Proof of Purchase to Demonstrate Eligibility for New OEM Natural Gas, Propane, Qualifying Electric or Qualifying Plug-in Hybrid Vehicles.

To demonstrate that an OEM natural gas, propane, qualifying electric, or qualifying plug-in hybrid motor vehicle is eligible for the tax credit, proof of purchase shall be made in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documents to the director:

(1)(a) a copy of the motor vehicle's window sticker, which includes its Vehicle Identification Number (VIN), or equivalent manufacturer's documentation showing that the motor vehicle is an OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle; or

(b) a signed statement by either an Automotive Service Excellence (ASE)-certified technician or Canadian Standards Association (CSA) America CNG Fuel System Inspector that includes the VIN, the technician's ASE or CSA America certification number, and states that the motor vehicle is an OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle;

(2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the name of the seller of the motor vehicle, the VIN, purchase date, and price of the motor vehicle;

(3) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit;

(4) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase; and

(5) the underhood identification number or engine group of the motor vehicle.

R307-121-4. Proof of Purchase to Demonstrate Eligibility for New Qualifying Electric Motorcycle.

To demonstrate that a qualifying electric motorcycle is eligible for the tax credit, proof of purchase shall be made in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documents to the director:

(1)(a) a copy of the Manufacturer's Statement of Origin (MSO) or equivalent manufacturer's documentation showing that the motor vehicle is a qualifying electric motorcycle; or

(b) a signed statement by an Automotive Service Excellence (ASE)-certified technician that includes the VIN, the technician's ASE certification number, and states that the motorcycle is a qualifying electric motorcycle;

(2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the name of the seller of the motor vehicle, the VIN, purchase date, and price of the motor vehicle;

(3) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit; and

(4) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase.

R307-121-5. Proof of Lease to Demonstrate Eligibility for New OEM Natural Gas, Propane, Qualifying Electric or Qualifying Plug-in Hybrid Vehicles.

To demonstrate that an OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle is eligible for the tax credit, proof of lease shall be made in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documents to the director:

(1)(a) a copy of the motor vehicle's window sticker, which includes its Vehicle Identification Number (VIN), or equivalent manufacturer's documentation showing that the motor vehicle is an OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle; or

(b) a signed statement by either an Automotive Service Excellence (ASE)-certified technician or Canadian Standards Association (CSA) America CNG Fuel System Inspector that includes the VIN, the technician's ASE or CSA America certification number, and states that the motor vehicle is an OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle;

(2) an original or copy of the lease agreement that includes the name of the taxpayer seeking the credit, the name of the lessor of the vehicle, the VIN, the beginning date of the lease, the value of the vehicle at the beginning of the lease, and the value of the vehicle at the end of the lease;

(3) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit;

(4) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase; and

(5) the underhood identification number or engine group of the motor vehicle.

R307-121-6. Proof of Lease to Demonstrate Eligibility for Qualifying Electric Motorcycle.

To demonstrate that a qualifying electric motorcycle is eligible for the tax credit, proof of lease shall be made in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documents to the director:

- (1)(a) a copy of the Manufacturer's Statement of Origin (MSO) or equivalent manufacturer's documentation showing that the motor vehicle is a qualifying electric motorcycle, or
- (b) a signed statement by an Automotive Service Excellence (ASE)-certified technician that includes the VIN, the technician's ASE certification number, and states that the motorcycle is a qualifying electric motorcycle;
- (2) an original or copy of the lease agreement that includes the name of the taxpayer seeking the credit, the name of the lessor of the vehicle, the VIN, the beginning date of the lease, the value of the vehicle at the beginning of the lease, and the value of the vehicle at the end of the lease;
- (3) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit; and
- (4) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase.

R307-121-7. Proof of Purchase to Demonstrate Eligibility for Motor Vehicles Converted to a Clean Fuel.

To demonstrate that a conversion of a motor vehicle to be fueled by a clean fuel is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documentation to the director:

- (1) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit; the name, address, and phone number of the person that converted the motor vehicle to run on a clean fuel; the VIN; the date of conversion; and the price of the conversion equipment installed on the motor vehicle;
- (2) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit; and
- (3) a signed statement by the person who converted the motor vehicle certifying that the conversion does not tamper with, circumvent, or otherwise affect the vehicle's on-board diagnostic system, in accordance with 19-1-406(2).

R307-121-8. Proof of Purchase to Demonstrate Eligibility for Special Mobile Equipment Converted to Clean Fuels.

To demonstrate that a conversion of special mobile equipment to be fueled by clean fuel is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documentation to the director:

- (1) a description, including serial number, of the special mobile equipment for which credit is to be claimed; and
- (2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the serial number, the date of conversion, and the price of the conversion equipment installed on the special mobile equipment.

KEY: air pollution, alternative fuels, tax credits, motor vehicles

September 3, 2015

Notice of Continuation September 7, 2016

19-2-104

19-1-402

59-7-605

59-10-1009

R307. Environmental Quality, Air Quality.**R307-124. General Requirements: Conversion to Alternative Fuel Grant Program.****R307-124-1. Authorization and Purpose.**

(1) This rule is authorized by Section 19-2-304, which establishes the requirements, procedures, criteria, and definitions used to determine eligibility for the Conversion to Alternative Fuel Grant Program.

(2) The procedures of this rule constitute the minimum requirements for the application and the awarding of funds that are designated for the Conversion to Alternative Fuel Grant Program.

R307-124-2. Definitions.

The following additional definitions apply to R307-124:

"Alternative fuel" means alternative fuel as defined in Subsection 19-2-302(2).

"Clean fuel grant" means clean fuel grant as defined in Subsection 19-2-302(4).

"Conversion equipment" means conversion equipment as defined in Subsection 19-2-302(5).

"Cost" means cost as defined in 19-2-302(6).

"Division" means the Division of Air Quality.

"Eligible vehicle" means eligible vehicle as defined in Subsection 19-2-302(9).

R307-124-3. Minimum Qualifications for an Applicant to Receive a Clean Fuel Grant.

(1) All applicants must be a registered business within the State of Utah and have a business license from the city or county in which they are located.

(2) Applicants that are applying for a clean fuel grant for a conversion of an eligible vehicle to run on propane must meet the requirements of R710-6 Liquefied Petroleum Gas (LPG) Rules.

R307-124-4. Minimum Qualifications for a Person that Installs Conversion Equipment on an Eligible Vehicle.

The following are the minimum qualifications for a person that installs conversion equipment on an eligible vehicle:

(1) A person that installs conversion equipment on an eligible vehicle to run on natural gas shall be:

(a) a Canadian Standards Association (CSA) America Compressed Natural Gas (CNG) Fuel System Inspector; or

(b) an Automotive Service Excellence (ASE) F1-certified technician.

(2) A person that installs conversion equipment on an eligible vehicle to run on propane shall be certified under R710-6 LPG Rules.

(3) A person that installs conversion equipment on an eligible vehicle to run on electricity shall be an ASE-certified technician.

R307-124-5. Preliminary Approval Application Procedure.

To be considered for a clean fuel grant all applicants shall apply for preliminary approval on forms provided by the Division as required by Subsection 19-2-304(1)(e), and shall provide additional information as requested by the Division.

(1) All applicants shall:

(a) acknowledge that receiving preliminary approval does not guarantee reimbursement by the Division, and preliminarily approved projects shall meet all the eligibility requirements listed in R307-124 before receiving the clean fuel grant for an eligible vehicle;

(b) certify under penalty of perjury and subject to provisions of Utah Code Section 76-8-504 ("written false statement"), that all savings on the cost of conversion equipment in the amount of the clean fuel grant will be passed to the owner of the eligible vehicle, as required in Subsection 19-2-303(2)(b);

(c) certify that the applicant is currently a registered business within the State of Utah and has a current business license; and

(d) agree to the provisions found in Subsection 19-2-303(3).

(2) Applicants applying for a clean fuel grant for a conversion of an eligible vehicle to run on natural gas shall provide the installer's ASE F-1 or CSA America certification number.

(3) Applicants that are applying for a clean fuel grant for a conversion of an eligible vehicle to run on propane shall provide the applicant's dealer license number and the installer's LPG certification number required by R710-6 LPG Rules.

(4) Applicants that are applying for a clean fuel grant for a conversion of an eligible vehicle to run on electricity shall provide the installer's ASE certification number.

(5) Preliminary approval will encumber funds for up to 60 calendar days from the preliminary application's approval.

R307-124-6. Final Approval Procedure and Payment Process.

Once an applicant has encumbered funds for a conversion, the applicant has up to 60 calendar days to obtain final approval from the Division. To obtain final approval, the applicant shall apply for final approval on forms provided by the Division, as required by Subsection 19-2-304(1)(e), and shall provide additional information as requested by the Division.

(1) To demonstrate that a conversion of a vehicle to be fueled by natural gas is eligible, an applicant shall submit the following documentation to the Director:

(a) A copy of the applicant's business registration from the Utah Department of Commerce and current business license from the city or county in which they are located;

(b) a copy of the installer's CSA America or ASE F-1 certification;

(c) an original or copy of the purchase order, customer invoice, or receipt that includes:

(i) the name, address, and phone number of the applicant;

(ii) the name of the installer;

(iii) the vehicle identification number (VIN);

(iv) the date of conversion; and

(v) the cost of the conversion (itemizing the equipment, labor, and the clean fuel grant);

(d)(i) a copy of the vehicle inspection report dated after the conversion, from an approved county I/M station, showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an I/M program; or

(ii) in all other areas of the state, a signed statement by the installer that includes the VIN, the installer's ASE or CSA America certification number, and states that the eligible vehicle's conversion is functional;

(e) a copy of the current Utah vehicle registration; and

(f) a signed statement by the installer certifying that the conversion does not tamper with, circumvent, or otherwise affect the vehicle's on-board diagnostic system, in accordance with Utah Code 19-1-406(2).

(2) To demonstrate that a conversion of a vehicle to be fueled by propane is eligible, an applicant shall submit the following documentation to the director:

(a) A copy of the applicant's business registration from the Utah Department of Commerce and current business license from the city or county in which they are located;

(b) a copy of the applicant's current dealer license required under R710-6;

(c) a copy of the installer's current certification under R710-6;

(d)(i) a copy of the vehicle inspection report, dated after the conversion, from an approved county I/M station, showing

that the converted motor vehicle meets all county emissions requirements for all installed fuel systems, if the motor vehicle is registered within a county with an I/M program, or

(ii) in all other areas of the state, a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional;

(e) Provide the EPA Certificate of Conformity, or equivalent documentation that is consistent with requirements outlined in 40 CFR Part 85 and 40 CFR Part 86, as published in Federal Register Volume 76 Page 19830 on April 8, 2011, or an executive order from the California Air Resources Board;

(f) an original or copy of the purchase order, customer invoice, or receipt that includes:

- (i) the name, address, and phone number of the applicant;
- (ii) the name of the installer;
- (iii) the VIN;
- (iv) the date of conversion; and
- (v) the cost of the conversion (itemizing the equipment, labor, and the clean fuel grant); and

(g) a copy of the current Utah vehicle registration.

(3) To demonstrate that a conversion of a motor vehicle to be powered by electricity is eligible, an applicant shall submit the following documentation to the director:

(a) A copy of the applicant's business registration from the Utah Department of Commerce and current business license from the city or county in which they are located;

(b) a copy of the current Utah vehicle registration;

(c) an original or copy of the purchase order, customer invoice, or receipt that includes:

- (i) the name, address, and phone number of the applicant;
- (ii) the name of the installer;
- (iii) the VIN;
- (iv) the date of conversion; and
- (v) the cost of the conversion (itemizing the equipment, labor, and the clean fuel grant);

(d) If the converted eligible vehicle does not have any auxiliary sources of combustion emissions, then the applicant shall submit a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional and that the converted motor vehicle does not have any auxiliary source of combustion emissions.

(e) If the converted eligible vehicle has an auxiliary source of combustion emissions, the applicant shall submit:

(i) a copy of the vehicle inspection report after the conversion, from an approved county I/M station, showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems, if the motor vehicle is registered within a county with an I/M program; or

(ii) in all other areas of the state, a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional; and

(iii) provide the EPA Certificate of Conformity, or equivalent documentation that is consistent with requirements outlined in 40 CFR Part 85 and 40 CFR Part 86, as published in Federal Register Volume 76 Page 19830 on April 8, 2011, or an executive order from the California Air Resources Board.

(4) All applicants shall complete and submit an IRS form W-9 to the Division.

(5) Approved applications shall continue to comply with the provisions of this rule.

R307-124-7. Grant Program Limitations.

Grant applications shall not be approved if:

(1) Awarding a grant to an applicant would result in the Department's inability to fulfill its obligations under this program or this rule;

(2) The applicant does not meet the approval requirements of Section R307-124-5;

(3) The fund balance is zero; or

(4) Awarding a grant to an applicant would result in the fund balance being less than zero.

R307-124-8. Review.

The Division reserves the right to request supplemental information it may deem necessary from an applicant, in order to effectively administer the program and this rule.

KEY: air pollution, alternative fuels, tax credits, motor vehicles

September 8, 2016

**19-2-301 through 305
19-1-403.3**

R357. Governor, Economic Development.**R357-11. Technology Commercialization and Innovation Program (TCIP).****R357-11-1. Purpose.**

(1) The purpose of the Technology Commercialization and Innovation Act is to catalyze and enhance growth of technologies by encouraging interdisciplinary research activity and targeted areas, facilitating the transition of technologies out of the higher education to enhance job creation, and to support the commercialization of technologies developed by small businesses to enhance job creation.

R357-11-2. Authority.

(1) UCA 63N-3-204(2)(b) requires the office to make rules to regulate the Technology Commercialization Innovation Program ("TCIP") grant structure and awards and to recapture awards when a recipient fails to maintain a presence in Utah for at least five years after the award is made, as set forth in these rules.

R357-11-3. Definitions.

- (1) This rule adopts the definitions set forth in 63N-3-203.
- (2) "Board" means the Board of Business Development set forth in 63N-1-301.
- (3) "Derivative Technology" means: Incremental advance or new of application of an existing technology.
- (4) "Developmental Research Phase" means: A phase in which the technology is not beyond a basic concept as determined by the office.
- (5) "New technology means" Intellectual property not previously marketed or generated revenue for any entity.
- (6) Qualified Pre-screening entity "means" A University's Technology Transfer Office or the USTAR Technology Outreach Innovation Program. This term only applies to University team applicants.
- (7) "Service location" means a location where a grant recipient is developing and/or commercializing the new technology in a way that provides economic impact to the state; including but not limited to: job creation, new state revenue, and new local revenue.
- (8) Solicitation Cycle Means: A granting cycle from application to grant distribution to be held at least once a year or more depending on availability of funds. All dates for any solicitation may be found on the TCIP website.
- (9) "TCIP" means the Technology Commercialization and Innovation Program as defined in Utah Code Section 63N-3-203(6).

R357-11-4. General Grant Requirements.

- (1) An applicant can only receive a TCIP award totaling an amount defined in policy per new technology. Policy shall be available on the TCIP website.
- (2) An applicant may not submit more than one application in the same solicitation cycle if the applicant has more than one new technology that meets the eligibility requirement for a TCIP grant.
 - (a) Only one new technology project per applicant will be funded in an solicitation cycle.
 - (b) An applicant that has generated more than \$500,000 in revenue from the proposed new or derivative technology is not eligible for a TCIP grant.
 - (c) An applicant that has raised more than \$3,000,000 in total prior funding, including equity and debt based financing, is not eligible for the TCIP grant.
 - (d) An Applicant may apply for a TCIP grant up to three times for a specific new technology. If, after the third application TCIP does not fund the technology, TCIP will reject subsequent applicants for the same new technology without further review.

R357-11-5. Matching Funds.

- (1) Matching funds may be considered in granting an award if the Office provides notice of such a requirement in the application. If considered a grant recipient must show proof of the matching funds.
- (2) Matching funds may be raised and spent at any time prior to submitting an invoice to the TCIP
 - (a) Grant recipient must submit bank statements (for Licensees) or financial statements (for Universities) demonstrating that the matching funds were available during the match period.
 - (b) If matching funds have been required by the Office to be a condition precedent to a grant award, matching funds do not have to be in place at the time of the application, but must be in place before TCIP funds are disbursed within the contract period of one year.

R357-11-6. Applicant Specific Requirements.

- (1) University Teams: In order to apply for a grant or loan under the TCIP program, a University Team must satisfy the following initial criteria:
 - (a) The technology must be organized by faculty led university team;
 - (b) The technology must have completed the developmental research phase; and
 - (c) The applicant must be pre-screened by a qualified pre-screening entity.
 - (d) The qualified pre-screening entity must certify that the technology meets the criteria set forth in (a) and (b) of this section, and the certification must be provided before grant is awarded.
- (2) Small Businesses: In order to apply for a grant or loan under the TCIP program, a small business must satisfy the following initial criteria:
 - (a) The applicant must be a "small business" as defined by the Federal Small Business Administration's definition and meet the criteria set forth in UCA Section 63N-3-203(5).
 - (b) A University-licensee is also be eligible if it meets the definitions in (a) above.

R357-11-7. Review of Applications and Awards.

- (1) Applicants who successfully meet the eligibility requirements set forth in R357-11-4 and R357-11-5 and R357-11-6 may submit their application for the TCIP grant through the online registration portal.
 - (2) The Executive Director of GOED or the director's designee will evaluate the applications received in each solicitation cycle. The Executive Director or the designee may use the following criteria, as defined by the Executive Director or the designee, to evaluate applications for TCIP grants:
 - (a) Quality, diversity, and number of jobs created in Utah;
 - (b) Quality of Management and Leadership, including experience with commercialization of new technologies as demonstrated by grant applicant's application and proposal;
 - (c) Strength of the new technology and potential for commercialization;
 - (d) Size and Growth of the market of the proposed technology
 - (e) Applicant's ability to market the technology and the credibility of their "go-to-market" strategy.
 - (f) Availability of matching funds and the source and relevance of those funds as set forth in R357-11-5
 - (g) Whether the project combines or coordinates related research at two or more institutions of higher education;
 - (h) Any other criteria deemed necessary or valuable to the selection process.
 - (3) Additionally, each applicant's application will be compared against and with the strength of all other applicants' applications and proposals within the same solicitation cycle.

(4) The Executive Director may assemble an outside review team to review the criteria set forth above and to make recommendations regarding the application.

(5) The Executive Director or his designee shall propose funding allocations to the Board.

(6) After the Board provides its advice, the Executive Director or the designee shall determine which applications should be prioritized for funding.

(7) Applications will be prioritized and funded based on the criteria set forth in (1)-(3). Award letters will be provided setting forth the terms of the grant offer.

R357-11-8. Requirements for Grant Recipients.

(1) Contract

(a) An applicant who is awarded a TCIP grant must sign a contract with the State of Utah prior to receiving any funds

(2) Sub-Contracts

(a) Grant Recipients are prohibited from subcontracting with another entity to administer the new technology funded by the Grant.

(3) Time in State

(a) Grant recipients will be expected to retain their company, and supported technology, and exploit the technology in the State of Utah for a minimum period of five years from the date of their agreement with the State.

(b) Any applicant who fails to maintain a manufacturing or service location in the state or who fails to exploit the new technology from a location in the state will be subject to recapture of the grant funding, subject to the provisions of Utah Code Section 63N-3-204(2)(d) and R357-11-8.

(4) Authorization to disclose tax information

(a) Licensee grant recipients will be required to sign an authorization to disclose tax records for up to five years from the date of their agreement with the State.

(5) Mentoring Program

(a) Grant awardees may be required to participate in the TCIP Mentoring Program in order to secure funding.

(b) If a grant award is contingent on participation in the TCIP Mentoring Program, an awardee will be required to show active participation in the program prior to receiving any or part of the grant funding as outlined in recipient's contract.

R357-11-9. Funding.

(1) TCIP funding is for developing existing research to the point of commercialization, bridging the "funding gap" between research dollars and manufacturing dollars.

(2) TCIP funding may be used to:

(a) Purchase equipment;

(b) Purchase supplies;

(c) Fund graduate/undergraduate students for time directly applicable to center commercialization activities related to the new technology;

(d) Fund faculty salaries directly applicable to center commercialization and related to the new technology;

(e) Fund product development activities (prototypes, models, simulations);

(f) Fund technology transfer activities (trade shows, brochures, etc.);

(g) Fund market analysis;

(h) Pay for consulting fees directly applicable to center commercialization;

(i) Pay for business manager or marketing manager salaries directly applicable to center commercialization activities; or

(j) Other purposes approved by GOED in writing.

(3) Carryover Funds

(a) The budget described in the contract is designated for the particular fiscal year and is an integral part of the contract. Upon the expiration of the contract, residual funds under the contract can only be accessed by amending the contract as

described above.

(4) Invoicing Requirement

(a) Funds are disbursed on a reimbursement basis. To receive funds from the program, an invoice of actual expenses of the funded center should be submitted by the awardee at least quarterly.

(b) Every invoice must include:

(i) Contract Number;

(ii) Name of entity and Principal Investigator.;

(iii) Billing Period; and

(iv) Current and Cumulative Amounts.

R357-11-10. Reporting Requirements.

(1) Reporting and Monitoring

(a) Grant awardees or mentor will be required to submit a report of activities, achievements and expenses, etc. as specified in the awardees contract.

(b) Grant awardees or mentor will be required to comply with the State's request for information pertaining to the economic impact to the State, at least annually for up to five years from date of the agreement.

(c) Grant awardees or mentor will also be required to respond to additional periodic reporting to the TCIP Director, Governor's Office of Economic Development and GOED Board, and the Legislature, at any time during the agreement period and thereafter for two additional years.

(d) Universities and Small Businesses should also expect periodic site visits from TCIP Director or board members. Such visits will be scheduled at mutually convenient times.

R357-11-11. Recapture.

(1) In order to receive grant funding under these provisions, an applicant must commit to maintain a manufacturing location or service location in the State of Utah for at least five years from the date that the grant award letter is issued.

(2) Maintaining a manufacturing and service location means that the applicant will perform at least 51% percent of the grant activities listed above in the State of Utah, will exploit the technology into a commercial project in Utah and will maintain working operations in the State for at least five years from the date the grant award letter is issued.

(3) If the applicant fails to maintain a manufacturing a service location in Utah for at least five years from the date the grant award letter is issued, the entire grant amount may be subject to recapture.

(4) A repayment by an applicant shall be prorated based on the number of full years the applicant operated in the state from the date of the awarded grant.

(5) Should an applicant fail to comply with the requirements to maintain a manufacturing and service location in Utah for the purpose of exploiting the new technology that is the subject of the grant, the Office will issue a Notice of Agency Action for Recapture.

(6) The Notice of Agency Action shall contain the grounds for recapture, and the prorated amount of the recapture, if any.

KEY: technology, innovations, commercialization, small businesses

September 12, 2016

63N-3-204(2)

R380. Health, Administration.**R380-200. Patient Safety Surveillance and Improvement Program (PSSIP).****R380-200-1. Purpose and Authority.**

(1) These rules establish a Patient Safety Surveillance and Improvement program (PSSIP) which extends the past Sentinel Event Reporting program and consists of two components. The first component includes a reportable events program intended to meet public accountability and transparency needs at a state-wide level. The second component uses the data obtained from the reportable events requirement as a foundation intended to develop state-wide patient safety related improvement solutions.

(2) The rule requires certain health care facilities to report patient safety events specified in this rule as determined by PSSIP in consultation with the patient safety quality work group.

(3) Reporting requirements for this rule will provide an annual state-wide report released in March of each year for public accountability and transparency. Additionally, data obtained from the reporting requirements will be used to help the Utah Department of Health and Health Care Providers understand patterns of failures, identify and implement state-wide improvement interventions, and evaluate state-wide interventions for improved outcomes. The PSSIP intends to be consistent with national regulatory and quality organizational standards to which facilities currently report and may include requirements from the Joint Commission, Agency for Healthcare Research and Quality, American Association of Ambulatory Surgical Centers, DNV Healthcare, Patient Safety Organizations, National Healthcare Safety Network, Centers for Medicaid and Medicare, and the National Quality Forum. As national standards for condition reporting change so may the PSSIP reporting requirements. The quality work output of the PSSIP provides limited access to identifiable health information that facilities report.

(4) This rule is authorized by Utah Code Subsections "Utah Code Ann. Subsections 26-1-30(3), (4), (6), (7), (8), and (9)".

R380-200-2. Definitions.

(1) "Adverse event" is an injury associated with healthcare processes rather than the underlying patient condition or disease itself and that prolongs medical intervention or results in harm, disability or death.

(2) "Causal analysis" means a process for identifying the basic or causal factor(s) that underlie variation in performance, resulting in the occurrence or possible occurrence of a patient safety event, which may include a Root Cause Analysis, a Failure Mode and Effect Analysis, hazards analysis, evidence review, observation or any other relevant analytical process aimed at identifying and understanding contributing factors.

(3) "Contaminated" means contamination that can be seen with the naked eye, or with use of detection mechanisms in general use, as they become reported or known to the health care facility.

(4) "Harm Scale" is a systematic method to designate a patient's level of harm that includes;

- (a) unsafe conditions,
- (b) near miss which is an event that was stopped prior to reaching the patient,
- (c) no harm,
- (d) additional monitoring or treatment to prevent harm,
- (e) temporary harm requiring intervention,
- (f) temporary harm requiring hospitalization,
- (g) permanent patient harm,
- (h) intervention to sustain life, or
- (i) patient death.

(5) "Health care facility" as defined in Title 26, Chapter 21 Part 1, Section 2, (13)(a).

(6) "Incident facility" means a facility where the patient safety event occurred while in the facility or immediately following discharge within a certain time period defined by specifically by the type of event from that facility.

(7) "Medication Error" means medication administration:

- (a) of a drug other than as prescribed or indicated;
- (b) of a dose other than as prescribed or indicated;
- (c) to a patient who was not prescribed the drug;
- (d) at a time other than prescribed or indicated;
- (e) at a rate other than as prescribed or indicated;
- (f) of an improperly prepared drug;
- (g) by a means other than as prescribed or indicated; or
- (h) unintentional administration of a drug to a patient who has a known allergy or drug interaction to the prescribed medication.

(8) "Patient safety events" are a compilation of serious, largely preventable, and harmful clinical adverse events that includes but are not limited to surgical events, product or device events, patient protection events, care management events, environmental events and criminal events.

R380-200-3. Reporting of Patient Safety Events.

(1) Each facility shall report to the Department all patient safety events within seventy-two hours of the facility's determination that a patient safety event may have occurred.

(2) Patient safety events are categorized as:

- (a) Reportable Events with outcome assessed by harm scale;

(b) Reportable Events resulting in permanent patient harm, intervention to sustain life, or patient death; and

(c) Reportable Events referenced by other reporting rules.

(3) Patient Safety Events include:

(a) Reportable Events required to be reported through the reporting portal and with the outcome level assessed by a harm scale:

(i) Surgery or procedures requiring consent performed on the wrong body part;

(ii) Surgery or procedures requiring consent performed on the wrong patient;

(iii) Incorrect surgery or procedures requiring consent performed on a patient;

(iv) Unintended retention of a foreign object in a patient after surgery or other procedures requiring consent;

(v) Infant discharged to the wrong person;

(vi) Neonatal hyperbilirubinemia, where bilirubin is greater than 25 milligrams per deciliter;

(vii) Stage 3 or 4 pressure ulcers acquired after admission to the facility, except for pressure ulcers that progress from Stage 2 to Stage 3, if the Stage 2 ulcer was documented upon admission;

(viii) Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by a toxic substance;

(ix) Unexpected flame or unanticipated smoke during and episode of care;

(x) Any care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed or certified health care provider;

(xi) Abduction of a patient of any age;

(xii) Non-consensual sexual contact on a patient, staff member, or visitor by another patient, staff member or unknown perpetrator while on the premises of the facility; or

(xiii) Elopement or disappearance of a patient with cognitive impairment for more than 4 hours;

(b) Reportable Events resulting in permanent patient harm, intervention to sustain life, or patient death required to be reported to the reporting portal;

(i) Arising from Intraoperative or immediately post-operative death of a patient who the facility classified prior to

surgery as Anesthesia Surgical Assessment Class I or discharged home from an Ambulatory Surgical Center. "Intraoperative" means literally during surgery. "Immediately post-operative" means within 24 hours after surgery, or other invasive procedure was completed, or after induction of anesthesia if surgery not completed;

(ii) Arising from the use of contaminated drugs, devices, or biologics provided by the facility;

(iii) Arising from the use or function of a device in patient care in which the device is used for an off-label use, except where the off-label use is pursuant to informed consent;

(iv) Arising from intravascular air embolism that occurs while being cared for in the facility, except for intravascular air emboli associated with neurosurgical procedures;

(v) Arising from Patient suicide or unsuccessful attempt while in the facility or ER within 72 hours of discharge;

(vi) Arising from a medication error;

(vii) Arising from a hemolytic reaction due to the administration of ABO/HLA incompatible blood or blood products;

(viii) Arising from hypoglycemia, the onset of hypoglycemia which occurs while the patient is being cared for in the facility;

(ix) Arising from the irretrievable loss of an irreplaceable biological specimen;

(x) Arising from failure to follow up or communicate laboratory, pathology, or imaging test results;

(xi) Arising from an unintended electric shock while being cared for at a health care facility, excluding emergency defibrillation in ventricular fibrillation and electroconvulsive therapies;

(xii) Arising from a burn incurred from any source while being cared for in a facility;

(xiii) Arising from the use of restraints or bedrails while being cared for in a facility;

(xiv) Arising from a fall while being cared for in a health care facility;

(xv) Arising from a criminal assault or battery that occurs on the premises of the health care facility;

(xvi) Arising from the introduction of a metallic object into the MRI area;

(xvii) Arising from labor or delivery while being cared for in a facility; or

(xviii) Of an infant born at gestation equal to or greater than 32 weeks excluding congenital causes.

(c) Reportable events required by other reporting rules:

The following set of reportable events is governed by other existing Utah law or rule and facility reporting to the reporting portal under this rule is not needed.

(i) Prolonged fluoroscopy with cumulative dose greater than 1500 rads to single field (R313-20-5);

(ii) Radiology to the wrong body region (R313-20-5);

(iii) Radiotherapy greater than 25% above the prescribed radiotherapy dose (R313-20-5);

(iv) Death or permanent loss of function related to a healthcare acquired infection (R386-705); and

(v) Provider Preventable Conditions (R414-1-29).

(4) If a facility suspects that a patient safety event may have occurred to a patient who was transferred from another facility, the receiving facility shall report the suspected patient safety event to the transferring facility.

(5) All facility required reports will be submitted through a secured reporting portal and consist of the following:

(a) facility information;

(b) patient information;

(c) condition information

(d) type of occurrence;

(e) analysis findings; and

(f) corrective actions.

R380-200-4. Causal Analysis.

(1) The incident facility shall establish a causal analysis process.

(2) The incident facility shall designate a responsible individual to be the facility lead for each patient safety event.

(3) The incident facility may request the Department representative to participate in the facility's causal analysis in a consultative role to enhance the reliability and thoroughness of the causal analysis.

(4) The Department shall notify the facility's lead within 72 hours of receiving the patient safety event report whether the Department intends to participate in the facility's root cause analysis.

(5) Participation in the facility's causal analysis by the Department representative shall not be construed to imply Department endorsement of the facility's final findings or action plan.

(6) The incident facility and the Department shall each make reasonable accommodations when necessary to allow for the Department representative's participation in the causal analysis.

(7) If, during the review process, the Department representative discovers problems with the facility's processes that limit either the thoroughness or credibility of the findings or recommendations, the representative shall report these to the designated responsible individual orally within 24 hours of discovery and in writing within 72 hours.

(8) The facility shall conduct a causal analysis which is timely, thorough and credible to determine whether reasonable system changes would likely prevent a patient safety event in similar circumstances.

(9) The causal analysis shall:

(a) focus primarily on systems and processes, not individual performance;

(b) progress from specific, direct causes in clinical processes to contributing causes in organizational processes;

(c) seek to determine related and underlying causes for identified causes;

(d) identify changes which could be made in systems and processes, either through redesign or development of new systems or processes, that would reduce the risk of such events occurring in the future; and

(e) may include a Known Complication Test Revision set of questions to be utilized when requesting a more thorough response from a unit or physician on evaluation of a known complication related to a procedure, treatment or test. These questions should address:

(i) Whether the procedure/treatment/test was appropriate and Warranted and based on nationally recognized standards of care;

(ii) Whether the complication is a known risk, was anticipated before the procedure and that the standard of care applied to mitigate the risk;

(iii) Whether the complication was identified in a timely manner (i.e. at the time of the occurrence);

(iv) Whether the complication treatment was according to the standard of care and in a timely manner; and

(v) Whether the treatment of the complication follows a nationally recognized standard of care.

(10) The Department shall determine the causal analysis to be complete if it:

(a) involves a complete review of the patient safety event including interviews with all readily identifiable witnesses and participants and a review of all related documentation;

(b) identifies the human and other factors in the chain of events leading to the final patient safety event, and the process and system limitations related to the occurrence;

(c) searches readily retrievable records to analyze the underlying systems and processes to determine where redesign

might reduce risk;

(d) makes reasonable attempts to identify and analyze trends of similar events which have occurred at the facility in the past;

(e) identifies risk points and their potential contributions to this type of event;

(f) determines potential improvement in processes or systems that would tend to decrease the likelihood of such events in the future, or that no such improvement opportunities exist; and

(g) is based on the evidence from the research literature, data from other sources, or is derived from a formal organizational improvement strategy.

(11) The Department shall determine the causal analysis to be credible if it:

(a) is led by someone with training in causal analysis processes and who was not involved in the patient safety event;

(b) involves any necessary consultation with either internal or external experts in the processes in question who were not involved in the patient safety event;

(c) includes participation by the leadership of the organization;

(d) includes individuals most closely involved in the processes and systems under review;

(e) is internally consistent, does not contradicting itself or leave obvious questions unanswered;

(f) provides an explanation for all findings of "not applicable" or "no problem"; and

(g) includes consideration of relevant, available literature.

R380-200-5. Reports and Action Plan.

(1) Within 60 calendar days of determination of the patient safety event, the incident facility shall submit to the department a final report with an action plan that:

(a) identifies changes that can be implemented to reduce risk or formulates a rationale for not implementing changes; and

(b) where improvement actions are planned, identifies who is responsible for implementation, when the action will be implemented (including any pilot testing), and how the effectiveness of the actions will be evaluated.

(2) The incident facility shall provide a final report to the facility's administration and the Department in a Department-approved electronic format that includes:

- (a) type of harm;
- (b) contributing factors;
- (c) preventability; and
- (d) actions taken.

(3) The Department representative may submit a separate written dissenting report to the administrator of the incident facility and the Department if the Department representative identifies problems with the processes that limit the thoroughness or credibility of the findings and recommendations and that have not been corrected after reporting them to the designated responsible individual.

(4) The incident facility may seek review of the dissenting report by filing a request for agency as allowed by the Utah Administrative Procedures Act and Department rule.

(5) If a dissenting report is not challenged or is upheld on review:

(a) the facility shall include it in the facility's records of the causal analysis; and

(b) the Department may forward it, together with the facility's report, to the appropriate state agencies responsible for licensing the facility.

R380-200-6. Confidentiality.

(1) Information that the Department holds under this rule is confidential under the provisions of Title 26, Chapter 3. Because of the public interest to foster health care systems

improvements, the Department may exercise its discretion under Section 26-3-8 and shall not release information collected under this rule to any person pursuant to the provisions of Subsections 26-3-7(1) or (8).

(2) Information produced or collected by a facility is confidential and privileged under the provisions of Title 26, Chapter 25.

R380-200-7. Extensions and Waivers.

(1) The Department may grant an extension of any time requirement of this rule if the facility demonstrates that the delay is due to factors beyond its control or that the delay will not adversely affect the required root cause analysis and the purposes of this rule.

(2) A facility requesting a waiver must submit the request to the Department representative prior to the deadline for the required action.

(3) The Department may grant a waiver of any other provision of this rule if the facility demonstrates that the waiver will not adversely affect the required root cause analysis and the purposes of this rule.

R380-280-8. Advisory Panel.

(1) The Department shall establish a multi-disciplinary advisory panel to assist in carrying out the Department's responsibilities under this rule.

(2) At least one representative from each healthcare system that is required to report under this rule shall be invited to be members of the advisory panel.

(3) Representatives from other Department patient safety initiatives and Health Care Associations shall be invited to participate and include but are not limited to:

- (a) infection control,
- (b) maternal and infant mortality,
- (c) women and infant care, and
- (d) other participants, as identified.

(4) Members of the advisory panel will complete confidentiality documents.

(5) The advisory panel will meet at least quarterly in person or via electronic meeting.

(6) An annual report will be provided to the panel one month prior to public release for review and corrections.

R380-200-9. Reporting.

(1) The Department will report at a minimum one time a year in March on all events occurring in the state the previous year.

(2) This report will be de-identified and publicly available.

(3) Internal reports may be generated for quality improvement initiatives and shared with members of the advisory panel.

(4) An annual report of events will be requested from the governing program and incorporated in the annual March Patient Safety Report.

R380-200-10. Penalties.

An entity that violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of \$5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: hospital, sentinel event, quality improvement, patient safety

December 30, 2015

Notice of Continuation September 13, 2016

26-1-30(2)(a)

26-1-30(2)(b)

26-1-30(2)(d)

26-1-30(2)(e)

26-1-30(2)(g)
26-3-8

R380. Health, Administration.**R380-210. Health Care Facility Patient Safety Program.****R380-210-1. Purpose and Authority.**

(1) This rule establishes the requirement for designated facilities to have a patient safety program and have in place effective internal patient safety processes for specified problems. The reporting under this rule will also help the Department and health care providers to understand patterns of system failures in the health care delivery system and, where appropriate, to recommend statewide improvements to reduce the incidence of patient injuries. It limits access to identifiable health information that facilities report to the Department under this rule.

(2) This rule is authorized by Utah Code Subsections 26-1-30(2)(a), (b), (d), (e), and (g) and Section 26-3-8.

R380-210-2. Definitions.

"Adverse drug event" means any event involving a medication that causes or leads to patient harm, while the medication is in the control of the facility. Such events may be related to professional practice, health care products, procedures, and systems including: prescribing; order communication; product labeling, packaging and nomenclature; compounding; dispensing; distribution; administration; education; monitoring; and use."

"Facility" means a general acute hospital, critical access hospital, ambulatory surgical center, psychiatric hospital, orthopedic hospital, rehabilitation hospital, chemical dependency/substance abuse hospital or chronic disease hospital as those terms are defined in Title 26, Chapter 21.

"Harm" means death or temporary or permanent impairment of body function or structure requiring intervention such as:

- (1) a change in monitoring the patient's condition;
- (2) a change in therapy; or
- (3) active medical or surgical treatment.

R380-210-3. Patient Injury Identification.

(1) Each facility shall implement processes to effectively identify and report to the Department the incidence of all:

(a) adverse drug events.

(2) Reporting to the Department may occur through established, statewide, electronic health care facility reporting systems managed by the Department.

(3) The report shall include codes applicable to the event from the current International Classification of Diseases Clinical Modification (ICD-CM) diagnosis coding, including codes for external cause of injury (E-codes) and codes for place of occurrence.

R380-210-4. Patient Injury Reduction.

(1) Each facility shall implement processes that are effective in reducing the incidence of:

(a) adverse drug events.

R380-210-5. Confidentiality.

(1) Information that the Department holds under this rule is confidential under the provisions of Title 26, Chapter 3. Because of the public interest needs to foster health care systems improvements, the Department exercises its discretion under Section 26-3-8 and shall not release information collected under this rule to any person pursuant the provisions of Subsections 26-3-7(1) or (8).

(2) Information produced or collected by a facility is confidential and privileged under the provisions of Title 26, Chapter 25.

R380-210-6. Penalties.

As required by Section 63G-3-201(5): An entity that

violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of \$5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: hospital, injury prevention, quality improvement, patient safety

July 26, 2010

Notice of Continuation September 13, 2016

26-1-30(2)(a)

26-1-30(2)(b)

26-1-30(2)(d)

26-1-30(2)(e)

26-1-30(2)(g)

26-3-8

R388. Health, Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health.

R388-804. Special Measures for the Control of Tuberculosis.

R388-804-1. Authority and Purpose.

(1) This rule establishes standards for the control and prevention of tuberculosis as required by Section 26-6-4, Section 26-6-6, Section 26-6-7, Section 26-6-8, and Section 26-6-9 of the Utah Communicable Disease Control Act and Title 26, Chapter 6b, Communicable Diseases-Treatment, Isolation and Quarantine Procedures.

(2) The purpose of this rule is to focus the efforts of tuberculosis control on disease elimination. The standards outlined in this rule constitute the minimum expectations in the care and treatment of individuals diagnosed with, suspected to have, or exposed to tuberculosis.

R388-804-2. Definitions.

(1) The definitions described in Section 26-6b apply to this rule, and in addition:

(a) Tuberculosis. A disease caused by *Mycobacterium tuberculosis* complex, i.e., *Mycobacterium tuberculosis*, *Mycobacterium bovis*, or *Mycobacterium africanum*.

(b) Acid-fast bacilli (AFB). Denotes bacteria that are not decolorized by acid-alcohol after having been stained with dyes such as basic fuchsin; e.g., the mycobacteria and nocardiae.

(c) Case of tuberculosis. An episode of tuberculosis disease meeting the clinical or laboratory criteria for tuberculosis as defined in the National Notifiable Diseases Surveillance System (NNDSS). The Department incorporates by reference the Tuberculosis 2009 Case Definition, CSTE (Council of State and Territorial Epidemiologists) Position Statement, 09-ID-65.

(d) Tuberculosis infection. The presence of *M. tuberculosis* in the body but the absence of clinical or radiographic evidence of active disease as documented by a significant tuberculin skin test, a negative chest radiograph and the absence of clinical signs and symptoms.

(e) Tuberculosis disease. A state of infectious or communicable tuberculosis, pulmonary or extra-pulmonary, as determined by a chest radiograph, the bacteriologic examination of body tissues or secretions, other diagnostic procedures or physician diagnosis.

(f) Directly observed therapy. A method of treatment in which health-care providers or other designated individuals physically observe the individual ingesting anti-tuberculosis medications.

(g) Drug resistant tuberculosis. Tuberculosis bacteria which is resistant to one or more anti-tuberculosis drug.

(h) Multi-drug resistant tuberculosis. Tuberculosis bacteria which is resistant to at least isoniazid and rifampin.

(i) Suspect case. An individual who is suspected to have tuberculosis disease, e.g., a known contact to an active tuberculosis case or a person with signs and symptoms consistent with tuberculosis.

(j) Program. Utah Department of Health: Bureau of HIV/AIDS, Tuberculosis Control and Refugee Health: Tuberculosis Control/Refugee Health Program.

(k) Department. Utah Department of Health.

R388-804-3. Required Reporting.

(1) Tuberculosis is a reportable disease. Individuals shall immediately notify the Department by telephone of all suspect and confirmed cases of pulmonary and extra-pulmonary tuberculosis as required by R386-702-2, R386-702-3.

(2) The report may also be made to the local health department, who shall notify the Department of all suspect and confirmed cases within 72 hours of report.

R388-804-4. Screening Priorities and Procedures.

(1) Private physicians and local health departments shall screen individuals considered to be at high risk for tuberculosis disease and infection before screening is conducted in the general population. Priorities shall be established based on those at greatest risk for disease and in consideration of the resources available.

(2) Individuals considered at high risk for tuberculosis include the following:

- (a) Close contacts of those with infectious tuberculosis;
- (b) Persons infected with human immunodeficiency virus;
- (c) Individuals who inject illicit drugs;
- (d) Inmates of adult and youth correctional facilities;
- (e) Residents of nursing homes, mental institutions, other long term residential facilities and homeless shelters;

(f) Recently arrived foreign-born individuals, within five years, from countries that have a high tuberculosis incidence or prevalence;

(g) Low income or traditionally under-served groups with poor access to health care, e.g., migrant farm workers and homeless persons;

(h) Individuals who are substance abusers and members of traditionally under-served groups;

(i) Individuals with certain medical conditions that may predispose them to tuberculosis infection and disease, e.g., diabetes, cancer, silicosis, and immune-suppressive disorders;

(j) Individuals who have traveled for extended periods of time in countries that have a high tuberculosis incidence or prevalence;

(k) Other groups may be identified by order of the Department, as needed to protect public health.

(3) Employers who are required to follow Occupational Safety and Health Administration guidelines for the prevention of tuberculosis transmission disease shall develop and implement an employee screening program.

(4) Tuberculosis screening shall be completed using either the Mantoux tuberculin skin test method or an FDA approved in-vitro serologic test.

(a) Screening for tuberculosis with chest radiographs or sputum smears to identify individuals with tuberculosis disease is acceptable in places where the risk of transmission is high and the time required to give the skin test makes the method impractical.

(b) If the skin test yields results indicating tuberculosis exposure, the individual shall be referred for further medical evaluation.

R388-804-5. Diagnostic Criteria.

(1) The Department incorporates by reference the American Thoracic Society (ATS/CDC) diagnostic and classification standards as described in the segment entitled "Diagnostic Standards and Classification of Tuberculosis in Adults and Children," published in the American Journal of Respiratory and Critical Care Medicine, Vol 161, pp. 1376-1395, 2000.

(2) The Department incorporates by reference the CDC diagnostic and classification standards for use of Nucleic Acid Amplification test in the document entitled "Updated Guidelines for the Use of Nucleic Acid Amplification Tests in the Diagnosis of Tuberculosis," MMWR; 58 (01); 7-10, 2010.

(3) The Department incorporates by reference the CDC diagnostic and classification standards for use of Interferon Gamma Release Assays as described in the document entitled, "Updated Guidelines for Using Interferon Gamma Release Assays to Detect *Mycobacterium tuberculosis* Infection, United States, 2010" MMWR; 59 (no. RR-5); 1-25, 2010.

In diagnosing tuberculosis, health care providers shall be expected to adhere to the standards listed in this document.

R388-804-6. Treatment and Control.

(1) The Department incorporates by reference the ATS/CDC treatment standards as described in the segment entitled "Centers for Disease Control and Prevention. Treatment of Tuberculosis, American Thoracic Society, CDC, and Infectious Diseases Society of America. MMWR 2003; 52 (No. RR-11), Centers for Disease Control and Prevention. Controlling Tuberculosis in the United States: Recommendations from the American Thoracic Society; CDC, and the Infectious Diseases Society of America. MMWR 2005; 54 (No. RR-12)" and "Centers for Disease Control and Prevention. Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection. MMWR 2000; 49 (No. RR-6)." In treating tuberculosis, health care providers must adhere to the standards listed in this document.

(2) A health-care provider who treats an individual with tuberculosis disease shall use the ATS/CDC treatment standards as a reference for the development of a comprehensive treatment and follow-up plan for each individual. The plan shall be developed in cooperation with the individual and approved by the local health department or the Program. Health-care providers shall routinely document an individuals' adherence to prescribed therapy for tuberculosis infection and disease. If isolation is indicated, the plan for isolation shall be approved by the local health department or the Program.

(3) A health-care provider who treats an individual with tuberculosis disease shall provide for directly observed therapy for individuals diagnosed with active tuberculosis disease.

(4) Individuals with infectious tuberculosis disease shall wear a mask approved by the local health department or the Program when outside the isolation area.

R388-804-7. Epidemiologic Investigations.

(1) The local health department shall conduct a contact investigation immediately upon report of an AFB smear positive suspected or confirmed case of tuberculosis disease.

(2) The contact investigation shall include interviewing, counseling, educating, examining and obtaining comprehensive information about those who have been in contact with individuals who have infectious tuberculosis.

(a) The investigation shall begin within three days of notification of an AFB smear positive suspected or confirmed case and the initial evaluation shall be completed within fourteen days of notification.

(b) Investigations of contacts to persons with active TB disease shall include the evaluation of contacts and the treatment of infected contacts.

(c) The local health department shall submit demographic data to the Department at 30 days and at 120 days after initiation of the contact investigation, and following the completion of prophylactic.

R388-804-8. Payment for Isolation and Quarantine.

(1) Individuals who are isolated or quarantined at the expense of the Department shall provide the Department with information to determine if any other payment source for the costs associated with isolation or quarantine is available.

R388-804-9. Penalty for Violation.

(1) Any person who violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: tuberculosis, screening, communicable diseases

September 23, 2015

Notice of Continuation September 30, 2016

26-6-4

26-6-6

26-6-7

26-6-8

26-6-9

26-6b

R388. Health, Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health.

R388-805. Ryan White Program.

R388-805-1. Authority and Purpose.

This rule governs program eligibility, benefits, and administration by the Department for the Ryan White HIV/AIDS Treatment Modernization Act of 2006 Part B Program (Ryan White Program). It is authorized by Section 26-1-5; Section 26-1-15; Section 26-1-18; and Section 26-1-30(2)(a), (b), (c), and (g).

R388-805-2. Definitions.

The following definitions apply to this rule:

(1) "HIV" means Human Immunodeficiency Virus.

(2) "Department" means the Utah Department of Health.

(3) "Client" means an individual who meets the eligibility criteria and is enrolled in the Ryan White Program pursuant to the provisions of this rule.

R388-805-3. Nature of Program and Benefits.

(1) The Ryan White Program provides reimbursement to providers for services rendered to HIV positive individuals who meet the eligibility requirements. The Ryan White Program provides limited services as described in this rule. The Department provides reimbursement coverage under the program only for services for each program:

(a) as provided in law governing the Ryan White HIV/AIDS Treatment Modernization Act of 2006;

(b) as described and limited in the Treatment and Care Program Comprehensive Plan, dated January 2009, which is adopted and incorporated by reference, and all applicable laws and rules;

(c) to the extent that it has agreed to reimburse providers with whom it contracts to provide services; and

(d) as limited in manuals that form part of its Provider Agreements or contracts with providers.

(2) Within available funding, the Department provides the following services under the Ryan White Program;

(a) The AIDS Drug Assistance Program (ADAP) provides HIV related medications;

(b) The Health Insurance Continuation Program pays for health insurance premiums and medication co-pays;

(c) Supportive Services Program provides a variety of supportive services that enable the client to access medical care as well as to retain the client in medical care.

(3) The Department may adjust the services available to meet current needs and fluctuations in available funding.

(4) The Ryan White Program is not health insurance. A relationship with the Department as the insurer and the client as the insured is not created under this program.

R388-805-4. Providers.

The Department reimburses only providers who contract with the Department to provide services under the program.

R388-805-5. Reimbursement.

(1) The Department shall reimburse only for services as limited in the manuals that form part of its agreements or contracts with providers.

(2) The Department shall reimburse providers according to the fee schedule or schedules that are made part of its agreements or contracts with providers.

(3) Payment for services by the Department and client co-payment, if any, constitutes full payment for services. A provider may not bill or collect any additional monies for services rendered pursuant to an agreement or contract to provide services under the Ryan White Program.

(4) The Department does not pay for services under the Ryan White Program for which an individual is eligible to

receive under Medicaid or any other primary payer source.

R388-805-6. Ryan White Program Eligibility.

(1) To receive services under the Ryan White Program, an individual must be a Utah resident and must have a medical diagnosis of HIV infection as verified by the individual's physician.

(a) An individual may own one home and one registered vehicle but may not have any other assets over \$5,000.00.

(b) If an individual owns a vehicle that is not registered and is considered an asset by Medicaid, which then prevents the individual from receiving benefits from Medicaid, the individual is also ineligible for services under the Ryan White Program.

(c) If an individual is ineligible for Medicaid due to failing Medicaid asset limits but otherwise meet Medicaid eligibility requirements, the individual is also ineligible for services under the Ryan White Program.

(2) To receive services under the AIDS Drugs Assistance Program, the Health Insurance Continuation Program and the Supportive Services Program, an individual must have income not exceeding 250% of the federal poverty level by providing any of the following:

- (i) Immediate year Tax Return.
- (ii) Immediate year W-2 Form(s).
- (iii) Most recent pay Stub/Earnings Statement.
- (iv) Most recent Social Security Disability Income Letter.
- (v) Most recent Supplemental Security Income Letter.
- (vi) Most recent Unemployment Statement.
- (vii) Most recent General Assistance Letter from the Department of Workforce Services.

(viii) Most recent Disability Income Letter from a disability insurer.

(3) To be eligible to receive assistance from the AIDS Drug Assistance Program, an individual:

(a) must not be eligible for Medicaid and not covered for the medication requested through this program by any other public or private health insurance coverage;

(b) must have a prescription for the medication requested.

(4) To participate in the Health Insurance Continuation Program, an individual must currently take HIV anti-retroviral medications.

(5) To participate in the Consolidated Omnibus Budget Reconciliation Act (COBRA) Continuation program an individual must meet the following additional eligibility criteria:

(a) The individual must have a medical diagnosis of HIV disease or is a dependent with HIV disease who is covered under the health insurance of someone else;

(b) The policy covers HIV related costs and outpatient HIV related drugs;

(c) The policy can be converted under COBRA;

(d) The individual has not previously been denied health insurance coverage for HIV disease related services;

(e) The individual must be ineligible for Medicaid or for group/individual health insurance from the individual's current employer;

(f) The individual must have begun the process of securing income support through the Social Security Disability Insurance (SSDI), or the Supplemental Security Income (SSI) or other disability programs if the individual is disabled, or have applied to receive public entitlement benefits.

(6) Clients must re-certify annually in order to continue program participation.

KEY: treatment and care, HIV/AIDS, ADAP, Ryan White Program

December 30, 2009

26-1-5

Notice of Continuation September 30, 2016

26-1-15

26-1-18

26-1-30(2)(a), (b), (c), (g)

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-1. Utah Medicaid Program.****R414-1-1. Introduction and Authority.**

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance under the medical programs available through the Division.
- (3) "Categorically needy" means aged, blind or disabled individuals or families and children:
 - (a) who are otherwise eligible for Medicaid; and
 - (i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or
 - (ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or
 - (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
 - (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
 - (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
 - (vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
 - (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or
 - (viii) who is a child for whom an adoption assistance agreement with the state is in effect.
- (b) whose categorical eligibility is protected by statute.
- (4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.
- (5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.
- (6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.
- (7) "Department" means the Department of Health.
- (8) "Director" means the director of the Division.
- (9) "Division" means the Division of Health Care Financing within the Department.
- (10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:
 - (a) placing the patient's health in serious jeopardy;
 - (b) serious impairment to bodily functions;
 - (c) serious dysfunction of any bodily organ or part; or
 - (d) death.
- (11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of

diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization that provides medical, behavioral or dental care services under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

The Department incorporates the July 1, 2016, versions of the following by reference:

- (1) Utah Medicaid State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;
- (2) Medical Supplies Utah Medicaid Provider Manual, Section 2, Medical Supplies, as applied in Rule R414-70, and the manual's attachment for Donor Human Milk Request Form;
- (3) Hospital Services Utah Medicaid Provider Manual with its attachments;
- (4) Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;
- (5) Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual;
- (6) Hospice Care Utah Medicaid Provider Manual, and the manual's attachment for the Utah Medicaid Prior Authorization Request for Hospice Services;
- (7) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;
- (8) Personal Care Utah Medicaid Provider Manual and the manual's attachment for the Request for Prior Authorization: Personal Care and Capitated Programs;
- (9) Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual;
- (10) Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual;
- (11) Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;
- (12) Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual;
- (13) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;
- (14) Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;
- (15) Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual;
- (16) Office of Inspector General Administrative Hearings Procedures Manual;
- (17) Pharmacy Services Utah Medicaid Provider Manual with its attachments;
- (18) Coverage and Reimbursement Code Look-up Tool <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>;
- (19) CHEC Services Utah Medicaid Provider Manual with its attachments;
- (20) Chiropractic Medicine Utah Medicaid Provider Manual;
- (21) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;
- (22) General Attachments (All Providers) for the Utah Medicaid Provider Manual;
- (23) Indian Health Utah Medicaid Provider Manual;
- (24) Laboratory Services Utah Medicaid Provider Manual with its attachments;
- (25) Medical Transportation Utah Medicaid Provider Manual;
- (26) Non-Traditional Medicaid Plan Utah Medicaid

Provider Manual with attachment;

- (27) Licensed Nurse Practitioner Utah Medicaid Provider Manual;
- (28) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables;
- (29) Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments;
- (30) Podiatric Services Utah Medicaid Provider Manual;
- (31) Primary Care Network Utah Medicaid Provider Manual with its attachments;
- (32) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;
- (33) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual;
- (34) School-Based Skills Development Services Utah Medicaid Provider Manual;
- (35) Section I: General Information Utah Medicaid Provider Manual;
- (36) Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual;
- (37) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;
- (38) Vision Care Services Utah Medicaid Provider Manual;
- (39) Women's Services Utah Medicaid Provider Manual;
- (40) Medically Complex Children's Waiver Utah Medicaid Provider Manual; and
- (41) Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual.

R414-1-6. Services Available.

- (1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).
- (2) The following services provided in the State Plan are available to both the categorically needy and medically needy:
 - (a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;
 - (b) outpatient hospital services and rural health clinic services;
 - (c) other laboratory and x-ray services;
 - (d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;
 - (e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;
 - (f) family planning services and supplies for individuals of child-bearing age;
 - (g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;
 - (h) podiatrist's services;
 - (i) optometrist's services;
 - (j) psychologist's services;
 - (k) interpreter's services;
 - (l) home health services;
 - (i) intermittent or part-time nursing services provided by a home health agency;
 - (ii) home health aide services by a home health agency; and
 - (iii) medical supplies, equipment, and appliances suitable for use in the home;
 - (m) private duty nursing services for children under age 21;

- (n) clinic services;
- (o) dental services;
- (p) physical therapy and related services;
- (q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;
- (r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;
- (s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;
- (t) services for individuals age 65 or older in institutions for mental diseases:
 - (i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;
 - (ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and
 - (iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;
- (u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;
- (v) inpatient psychiatric facility services for individuals under 22 years of age;
- (w) nurse-midwife services;
- (x) family or pediatric nurse practitioner services;
- (y) hospice care in accordance with section 1905(o) of the Social Security Act;
- (z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;
 - (aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;
 - (bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and
 - (cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:
 - (i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;
 - (ii) transportation services;
 - (iii) skilled nursing facility services for patients under 21 years of age;
 - (iv) emergency hospital services; and
 - (v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.
 - (dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:
 - (i) it is medically necessary and more appropriate than any Medicaid covered service; and
 - (ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

Certain qualified aliens described in Title IV of Pub. L. No. 104 193, 110 Stat. 2105, may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-

emergency services as described in Section 1903(v) of the Social Security Act.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Department has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR, Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) The Department conducts hospital utilization review as outlined in the Hospital Services Utah Medicaid Provider Manual in effect at the time service is rendered.

(2) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation.

(3) The standards in the InterQual Criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:

- (a) excluded as a Medicaid benefit by rule or contract;
- (b) provided in an intensive physical rehabilitation center as described in Rule R414-2B; or
- (c) organ transplant services as described in Rule R414-10A.

In these exceptions, or where InterQual is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) In order to control utilization, and in accordance with 42 CFR 440, Subpart B, services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program are not a covered benefit. In addition, the Department will also use prior authorization for

utilization control. All necessary and appropriate medical record documentation for prior approvals must be submitted with the request. If the provider has not obtained prior authorization for a service as outlined in the Medicaid provider manual, the Department shall deny coverage of the service.

(2) The Department may request records that support provider claims for payment under programs funded through the Department. These requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the Department will close the record and will evaluate the payment based on the records available.

(3)(a) If the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program or does not comply with state or federal policies and regulations, the provider shall refund the payment upon written request from the Department.

(b) If services cannot be properly verified or when a provider refuses to provide or grant access to records, the provider shall refund to the Department all funds for services rendered. Otherwise, the Department may deduct an equal amount from future reimbursements.

(c) Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R410-14.

(d) A provider shall reimburse the Department for all overpayments regardless of the reason for the overpayment.

(e) Provider appeals of action for recovery or withholding of money initiated by the Office of Inspector General of Medicaid Services (OIG) shall be governed by the OIG Administrative Hearings Procedures Manual incorporated by reference in Section R414-1-5.

R414-1-15. Medicaid Fraud.

The Department has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63G, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of

certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

(d) Rule R428-10; and

(e) Section 26-6-31.

(3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release.

KEY: Medicaid

September 15, 2016

Notice of Continuation March 2, 2012

26-1-5

26-18-3

26-34-2

R414-1-27. Determination of Death.

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

R414-1-28. Cost Sharing.

(1) An enrollee is responsible to pay the:

(a) hospital a \$220 coinsurance per year;

(b) hospital a \$6 copayment for each non-emergency use of hospital emergency services;

(c) provider a \$3 copayment for outpatient office visits for physician and physician-related mental health services except that no copayment is due for preventive services, immunizations, health education, family planning, and related pharmacy costs; and

(d) pharmacy a \$3 copayment per prescription up to a maximum of \$15 per month;

(2) The out-of-pocket maximum payment for copayments for physician and outpatient services is \$100 per year.

(3) The provider shall collect the copayment amount from the Medicaid client. Medicaid shall deduct that amount from the reimbursement it pays to the provider.

(4) Medicaid clients in the following categories are exempt from copayment and coinsurance requirements;

(a) children;

(b) pregnant women;

(c) institutionalized individuals;

(d) American Indians; and

(e) individuals whose total gross income, before exclusions and deductions, is below the temporary assistance to needy families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility caseworker on a monthly basis to maintain their exemption from the copayment requirements.

R414-1-29. Provider-Preventable Conditions.

(1) In accordance with 42 CFR 447.26, October 1, 2011 ed., which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as noted therein. Please see Utah Medicaid State Plan Attachments 4.19-A and 4.19-B for detail.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider-preventable conditions whether or not reimbursement for the services is sought. Medicaid providers shall meet this requirement by complying with existing state reporting requirements (rules and legislation) of these events that include:

(a) Rule R380-200;

(b) Rule R380-210;

(c) Rule R386-705;

**R432. Health, Family Health and Preparedness, Licensing.
R432-200. Small Health Care Facility (Four to Sixteen
Beds).**

R432-200-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-200-2. Purpose.

This rule allows services at varying levels of health care intensity to be provided in structures that depart from the traditional institutional setting. Health care may be delivered in a less restrictive, residential, or home-like setting. Small health care facilities are categorized as Level I, Level II, Level III, or Level IV according to the resident's ability or capability for self-preservation: to exit a building unassisted in an emergency.

R432-200-3. Compliance.

All small health care facilities shall be in full compliance at the time of licensure. All Medicare and Medicaid certified facilities must comply with Title XVIII and Title XIX regulations.

R432-200-4. Definitions.

(1) See common definitions in R432-1-3.

(2) Special Definitions:

(a) "Levels of Care" mean the range of programs and the physical facilities in which they may be offered according to these rules.

(b) "Level I" refers to a skilled nursing care facility that provides at least 24-hour care and licensed nursing services to persons who are non-mobile and non-ambulatory. All Level I facilities shall conform to the requirements in the Utah Department of Health, Nursing Care Facility rules R432-150. A Level I facility with a bed capacity of 16 beds or less, may request a variance from some construction standards for nursing care facilities, if the health, safety, and welfare of residents can be preserved.

(i) Skilled Nursing Facility shall maintain and operate 24-hour skilled nursing services for the care and treatment of chronically ill or convalescent residents whose primary need is the availability of skilled nursing care or related service on an extended basis.

(ii) Intermediate Care Facility shall provide 24-hour in resident care to residents who need licensed nursing supervision and supportive care, but who do not require continuous nursing care.

(c) "Level II" refers to a facility that provides at least 24-hour care, 24-hour staff coverage, and licensed therapy or nursing care (based on program requirements) to 4-16 persons who are non-mobile and non-ambulatory. Level II facilities may include:

(i) Health Care Nursery shall provide full-time supervision and care to children under six years of age who do not require continuous nursing care. The facility shall provide at least the following:

- (A) Twenty-four hour care and/or staff availability;
- (B) Provision for medical coverage;
- (C) Provision for dietary services;
- (D) Provision for licensed therapies, as required.

(ii) Intermediate Care Facility for the Mentally Retarded shall provide 24-hour supervisory care to developmentally disabled and mentally retarded individuals, (note: An ICF/MR facility may be categorized as a Level IV facility if no resident is under therapy that utilizes chemical or physical restraints which may render the resident incapable of self-preservation in an emergency), who need supervision in a coordinated and integrated program of health, habitative and supportive services, but who do not require continuous nursing care. The facility shall, except as indicated in the supplement, provide the following:

- (A) Twenty-four hour care and staff availability;
- (B) Provision for medical coverage;
- (C) Provision for dietary services;
- (D) Provision for licensed therapies, as required.

(iii) Home for the Aging shall provide group housing, supervision, social support, personal care, therapy, and some nursing care to elderly persons who do not need intermediate or skilled nursing care. The facility shall provide at least the following:

- (A) Twenty-four hour staff availability;
- (B) Provision for medical coverage;
- (C) Provision for dietary services for at least three meals;
- (D) Provision for licensed therapies, as necessary.

(iv) Social Rehabilitation Facility shall provide group housing, personal care, social rehabilitation, and treatment for alcoholism, drug abuse, or mental problems to persons who do not require intermediate or skilled nursing care. (Note: if each resident in the program is certified by a physician or QMRP as ambulatory and in an alcohol or drug abuse rehabilitation program designed to lead to independent living, then the facility may be categorized as a Level IV facility.) The facility shall provide the following:

- (A) Twenty-four hour staff availability or program care;
- (B) Provision for medical coverage;
- (C) Provision for dietary services for at least three meals;
- (D) Provision for licensed therapies, as necessary.

(d) "Level III" refers to a facility that provides at least 24-hour staff coverage and licensed therapy (based on program requirements) to 4-16 persons who are ambulatory and mobile but who are under chemical or physical restraints. Level III facilities may include:

(i) Mental Health Facility shall provide 24 hour care to persons with mental illness who require medical and psychiatric supervision including diagnosis and treatment. The facility shall provide at least the following:

- (A) Twenty-four hour staff coverage;
- (B) Provision for medical and psychiatric supervision;
- (C) Provision for dietary services;
- (D) Provision for licensed therapies, as necessary.

(ii) Youth Correction Center shall provide 24-hour supervision, care, training, treatment, and therapy to persons who by court order may be restricted in their daily activities, and under security control that includes lock-up. The facility shall provide at least the following:

- (A) Twenty-four hour staff coverage;
- (B) Provision for medical and psychiatric supervision;
- (C) Provision for dietary services;
- (D) Provision for licensed therapies, as necessary.

(e) "Level IV" refers to a facility that provides specialized program and support care to 4-16 persons who are ambulatory and mobile, who require programs of care and more supervision than provided in a residential care facility. Level IV facilities may include:

(i) Intermediate Care Facility for the Mentally Retarded. All mentally retarded residents in a Level IV facility must be ambulatory to qualify for Medicaid/Medicare reimbursement.

(ii) Mental Health Facility. (See R432-200-4(2)(d)(i), Level III)

(iii) Home for the Aging. (See R432-200-4(2)(c)(iii), Level II)

(iv) Social Rehabilitation Facility. (See R432-200-4(2)(c)(iv), Level II)

R432-200-5. License Required.

See R432-2.

R432-200-6. Construction and Physical Environment.

(1) See R432-12, Small Health Care Facility Construction rules.

R432-200-7. Administration and Organization.**(1) Organization.**

Each facility shall be operated by a licensee.

(2) Duties and Responsibilities.

The licensee shall be responsible for compliance with Utah law and licensure requirements and for the organization, management, operation, and control of the facility. Responsibilities shall include at least the following:

(a) Comply with all federal, state and local laws, rules, and regulations;

(b) Adopt and institute by-laws, policies and procedures relative to the general operation of the facility including the health care of the residents and the protection of their rights;

(c) Adopt a policy that states the facility will not discriminate on the basis of race, color, sex, religion, ancestry or national origin in accordance with Section 13-7-1;

(d) Appoint, in writing, a qualified administrator to be responsible for the implementation of facility by-laws and policies and procedures, and for the overall management of the facility;

(e) Secure and update contracts for professional and other services;

(f) Receive and respond, as appropriate, to the inspection report by the Department;

(g) Notify the Department, in writing, at least 30 days prior to, but not later than five days after, a change of administrator. The notice shall include the name of the new administrator and the effective date of the change.

(3) Administrator.**(a) Administrator's Appointment.**

Each facility shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce in a health care field.

(b) A copy of the administrator's license or credentials shall be posted alongside the facility's license in a place readily visible to the public.

(c) The administrator shall act as the administrator of no more than four small health care facilities (or a maximum of 60 beds) at any one time.

(d) The administrator shall have sufficient freedom from other responsibilities and shall be on the premises of the facility a sufficient number of hours in the business day (at least four hours per week for each six residents) and as necessary to properly manage the facility and respond to appropriate requests by the Department.

(e) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in his absence. This person shall have sufficient power, authority, and freedom to act in the best interests of resident safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(4) Administrator Responsibilities.

The administrator shall have the following responsibilities:

(a) Complete, submit and file all records and reports required by the Department;

(b) Act as a liaison among the licensee, medical and nursing staff, and other supervisory staff of the facility, as appropriate, and respond to recommendations of the quality assurance committee;

(c) Assure that employees are oriented to their job functions and receive appropriate in-service training;

(d) Implement policies and procedures for the operation of the facility;

(e) Hire and maintain the required number of licensed and non-licensed staff as specified in these rules to meet the needs of residents;

(f) Maintain facility staffing records for 12 months;

(g) Secure and update contracts required for professional

and other services not provided directly by the facility;

(h) Verify all required licenses and permits of staff and consultants at the time of hire and effective date of contract;

(i) Review all incident and accident reports and take appropriate action.

(5) Medical Director.

The administrator of each facility shall retain, by formal agreement, a licensed physician to serve as medical director or advisory physician on a consulting basis according to the residents' and facility's needs.

(6) Medical Director Responsibilities.

The medical director or advisory physician shall have responsibility for at least the following:

(a) Review or develop written resident-care policies and procedures including the delineation of responsibilities of attending physicians;

(b) Review resident-care policies and procedures annually with the administrator;

(c) Serve as liaison between the resident's physician and the administrator;

(d) Serve as a member of the quality assurance committee (see R432-200-10);

(e) Review incident and accident reports at the request of the administrator to identify health hazards to residents and employees;

(f) Act as consultant to the health services supervisor in matters relating to resident-care policies.

(7) Staff and Personnel.**(a) Organization.**

The administrator shall employ qualified personnel who are able and competent to perform their respective duties, services, and functions.

(b) Qualifications and Orientation.

(i) The administrator shall develop job descriptions including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements for each position or employee.

(ii) Periodic employee performance evaluations shall be documented.

(iii) All personnel shall have access to the facility's policies and procedures manuals, resident-care policies, therapeutic manuals, and other information necessary to effectively perform their duties and carry out their responsibilities.

(8) Health Surveillance.

(a) The facility shall establish a policy and procedure for the health screening of all facility personnel which conforms with the provisions of R432-150-10(4).

(b) All dietary and other staff who handle food shall obtain a Food Handler's Permit from the local health department.

(9) In-service Training.

There shall be planned and documented in-service training for all facility personnel. The following topics shall be addressed annually:

(a) Fire prevention (see R432-200-11);

(b) Accident prevention and safety procedures including instruction in the following:

(i) Body mechanics for all employees required to lift, turn, position, or ambulate residents;

(ii) Proper safety precautions when floors are wet or waxed;

(iii) Safety precautions and procedures for heat lamps, hot water bottles, bathing and showering temperatures;

(c) Review and drill of emergency procedures and evacuation plan (See R432-200-11);

(d) Prevention and control of infections (see R432-150-25);

(e) Confidentiality of resident information;

(f) Residents' rights;

(g) Behavior Management and proper use and documentation of restraints;

(h) Oral hygiene and first aid; and

(i) Training in the principles of Cardiopulmonary Resuscitation (CPR) for licensed nursing personnel and others as appropriate;

(j) Training in habilitative care;

(k) Reporting abuse, neglect and exploitation.

R432-200-8. Smoking Policies.

Smoking policies shall comply with Title 26, Chapter 38 the, "Utah Indoor Clean Air Act", and Section 31-4.4 of the 1991 Life Safety Code.

R432-200-9. Contracts and Agreements.

(1) Contracts.

(a) The licensee shall secure and update contracts for required professional and other services not provided directly by the facility.

(b) Contracts shall include:

(i) The effective and expiration dates of the contract;

(ii) A description of goods or services provided by the contractor to the facility;

(iii) A statement that the contractor will conform to the standards required by Utah law or rules.

(c) The contract shall be available for review by the Department.

(2) Transfer Agreements.

(a) The licensee shall maintain, a written transfer agreement with one or more hospitals (or nearby health facilities) to facilitate the transfer of residents and essential resident information.

(b) The transfer agreement shall include provisions for:

(i) Criteria for transfer;

(ii) Appropriate methods of transfer;

(iii) Transfer of information needed for proper care and treatment of the individual being transferred;

(iv) Security and accountability of the personal property of the individual being transferred;

(v) Proper notification of the hospital and next of kin or responsible person before transfer.

R432-200-10. Quality Assurance.

(1) The administrator shall monitor the quality of services offered by the facility through the formation of a committee that addresses infection control, pharmacy, therapy, resident care, and safety, as applicable.

(2) The committee shall include the administrator, consulting physician or medical director, health services supervisor, and consulting pharmacist. Special program directors and maintenance and housekeeping personnel shall serve as necessary.

(3) The committee shall meet quarterly and keep minutes of the proceedings.

(4) Infection Control Requirements.

See R432-150-11.

(5) Pharmacy Requirements.

Based on the services offered, the committee shall:

(a) Monitor the pharmaceutical services in the facility;

(b) Recommend changes to improve pharmaceutical services;

(c) Evaluate medication usage; and

(d) Develop and review pharmacy policies and procedures annually, and recommend changes to the administrator and licensee.

(6) Resident Care Requirements.

Based on the services offered, the committee shall address the following:

(a) Review, at least annually, the facility's resident care

policies including rehabilitative and habilitative programs, as appropriate.

(b) Make recommendations to the medical director and advisory physician as appropriate;

(c) Review recommendations from other facility committees to improve resident care.

(7) Safety Requirements.

Based on the services offered, the committee shall address the following:

(a) Review all incident and accident reports and recommend changes to the administrator to prevent or reduce their recurrence;

(b) Review facility safety policies and procedures, at least annually, and make recommendations;

(c) Establish a procedure to inspect the facility periodically for hazards. An inspection report shall be filed with the Committee.

R432-200-11. Emergency and Disaster.

(1) Facilities have the responsibility to assure the safety and well-being of their residents in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, or epidemic.

(2) Policies and Procedures.

(a) The licensee and the administrator shall be responsible for the development of a plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters.

(b) The written plan shall be distributed to all facility staff to assure prompt and efficient implementation.

(c) The plan shall be reviewed and updated to conform with local emergency plans, at least annually, by the administrator and the licensee.

(d) The plan shall be available for review by the Department.

(3) Staff and residents shall receive education, training, and drills to respond in an emergency.

(a) Drills and training shall be documented and comply with applicable laws and regulations.

(b) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and emergency transport systems shall be posted.

(4) Emergency Procedures.

The facility's response procedures shall address the following:

(a) Evacuation of occupants to a safe place within the facility or to another location;

(b) Delivery of essential care and services to facility occupants by alternate means;

(c) Delivery of essential care and services when additional persons are housed in the facility during an emergency;

(d) Delivery of essential care and services to facility occupants when staff is reduced by an emergency;

(e) Maintenance of safe ambient air temperatures within the facility;

(i) Emergency heating plans must have the approval of the local fire department.

(ii) An ambient air temperature of 58 degrees F (14 degrees C) or less constitutes an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate and appropriate action in the best interests of the resident.

(5) Emergency Plan.

(a) The facility's emergency plan shall delineate:

(i) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(ii) On-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an

emergency or disaster;

(iii) Assignment of personnel to specific tasks during an emergency;

(iv) Methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) The individuals who shall be notified in an emergency in the order of priority. Telephone numbers shall be accessible to staff at each nurse's station;

(vi) Methods of transporting and evacuating residents and staff to other locations;

(vii) Conversion of facility for emergency use.

(b) Documentation of emergency events and responses and a record of residents and staff evacuated from the facility to another location shall be kept. Any resident emergency shall be documented in the resident's record.

(c) Drills shall be held semi-annually for all residents and staff.

(d) There shall be regular in-service training on disaster prepare

(6) Fire Emergencies.

(a) The licensee and administrator shall develop a written fire-emergency and evacuation plan in consultation with qualified fire safety personnel.

(b) An evacuation plan delineating evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department shall be posted throughout the facility.

(c) The written fire-emergency plan shall include fire-containment procedures and how to use alarm systems and signals.

(d) Fire and internal disaster drills shall be held, at least quarterly, under varied conditions for each shift.

(i) The actual evacuation of residents during a drill is optional except in a facility caring for residents who are capable of self-preservation.

(ii) The actual evacuation of residents during a drill on the night shift is optional.

R432-200-12. Residents' Rights.

(1) Residents' Rights Policies and Procedures.

(a) A committee shall be appointed to update policy, evaluate, and act on residents' rights complaints.

(b) Written residents' rights shall be established, posted in areas accessible to residents, and made available to the resident, or guardian, or next of kin.

(c) These shall be available to the public and the Department upon request.

(2) Each resident admitted to the facility shall have the following rights:

(a) To be fully informed, as evidenced by the resident's written acknowledgement prior to or at the time of admission and during stay, of residents' rights and of all rules governing resident conduct;

(b) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act;

(c) To be fully informed of his medical condition, by a physician, unless medically contraindicated and documented in the resident's health record by the attending physician;

(d) To be afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

(e) To refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;

(f) To be transferred or discharged only for medical reasons, or his welfare or that of other residents, or for nonpayment for his stay, and to be given reasonable advance

notice to ensure orderly transfer or discharge; such actions shall be documented in his health record;

(g) To be encouraged and assisted throughout the period of stay to exercise rights as a resident and as a citizen, and to this end to voice grievances and recommend changes in policies and services to facility staff or outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

(h) To manage his personal financial affairs, or to be given at least quarterly or upon request an accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility;

(i) To be free from mental and physical abuse and to be free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the resident from injury to himself or to others (see R432-150-12);

(j) To be assured confidential treatment of his personal and medical records and to approve or refuse their release to any individual outside the facility, except in the case of his transfer to another health facility, or as required by law or third party payment contract;

(k) To be treated with consideration, respect and full recognition of his dignity and individuality, including privacy in treatment and in care for personal needs;

(l) Not to be required to perform services for the facility that are not included for therapeutic purposes in his plan of care;

(m) To associate and communicate privately with persons of his choice, and to send and receive personal mail unopened;

(n) To meet with and participate in activities of social, religious, and community groups at his discretion;

(o) To retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(p) If married, to be assured privacy for visits by his spouse and if both are residents in the facility, to be permitted to share a room;

(q) To have daily visiting hours established;

(r) To have members of the clergy admitted at the request of the resident or person responsible at any time;

(s) To allow relatives or persons responsible to visit residents at any time;

(t) To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes;

(u) To have reasonable access to telephones both to make and receive confidential calls.

(v) To wear appropriate personal clothing and religious or other symbolic items as long as they do not interfere with diagnostic procedures or treatment.

(3) Safeguards for Residents' Monies and Valuables

Each facility to whom a resident's money or valuables have been entrusted according to R432-200- 12(2)(h), above shall comply with the following:

(a) No licensee shall use residents' monies or valuables as his own or mingle them with his own.

(i) Residents' monies and valuables shall be separated and intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(ii) Each licensee shall maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care.

(b) Records of residents' monies which are maintained as a drawing account shall include a control account for all receipts and expenditures, an account for each resident and supporting vouchers filed in chronological order. Each account shall be kept current with columns for debits, credits, and balance.

(c) Records of residents' monies and other valuables entrusted to the licensee for safekeeping shall include a copy of

the receipt furnished to the resident or to the person responsible for the resident.

(d) Residents' monies not kept in the facility shall be deposited within five days of receipt of such funds in an interest-bearing account in a local bank authorized to do business in Utah, the deposits of which must be insured.

(e) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle resident funds from one facility with another.

(f) When the amount of residents' money entrusted to a licensee exceeds \$150, all money in excess of \$150 shall be deposited in an interest-bearing account as specified in R432-200-12(3)(c) and (d) above.

(g) Upon discharge of a resident, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the resident in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within three normal banking days.

(h) Within 30 days following the death of a resident, except in a coroner or medical examiner case, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. When a resident dies without a representative or known heirs, immediate written notice thereof shall be given by the facility to the State Medical Examiner and the registrar of the local probate court, and a copy of said notice shall be filed with the Department.

R432-200-13. Admission and Discharge.

Each facility shall develop admission and discharge policies that shall be available to the public upon request.

(1) Admission Policies.

(a) Residents shall be accepted for treatment and care only if the facility is properly licensed for the treatment required and has the staff and resources to meet the medical, physical, and emotional needs of the resident.

(b) Residents shall be admitted by, and remain under the care of, a physician or individual licensed to prescribe care for the resident.

(c) There shall be a written order (a documented telephone order is acceptable) for admission and care at the time of admission.

(d) A resident shall be assessed within seven days of admission unless otherwise indicated by a program requirement. Admission policies shall define the assessment process including an identification of the resident's medical, nursing, social, physical, and emotional needs.

(e) A physical examination shall be performed, in accordance with R432-200-14(2), by the attending physician or by an individual licensed and so authorized.

(f) Upon admission, a brief narrative of the resident's condition including his temperature, pulse, respiration, blood pressure, and weight shall be documented.

(g) The resident shall be informed of his rights as a resident.

(i) A written copy of the facility's residents' rights shall be explained and given to the resident.

(ii) If the resident is unable to comprehend his rights, a written copy shall be given to the next of kin or other responsible party.

(iii) The inability of the resident to provide consent shall be documented in the resident's record.

(2) Discharge Policies.

(a) The resident shall be discharged when the facility is no longer able to meet the resident's identified needs.

(b) There shall be an order for the resident's discharge by the physician or person in charge of the resident's care.

(c) A discharge summary containing a brief narrative of the resident's diagnoses, course of treatment, conditions, and final disposition shall be documented in the medical record.

(d) Upon discharge of a resident, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the resident in exchange for a signed receipt (see R432-200-12(3)).

R432-200-14. Physician Services.

(1) General Requirements.

(a) Each resident in need of nursing services, habilitative, or rehabilitative care shall be under the care of a licensed physician.

(b) Each resident shall be permitted to choose his physician.

(c) Upon admission, each resident shall have orders for treatment and care.

(2) Physician Responsibilities.

(a) Each resident shall have a medical history and pertinent physical examination at least annually.

(b) Each intermediate care resident shall be seen at least once during the first 60 days of residency.

(c) The attending physician or medical practitioner shall see the resident whenever necessary but at least every 60 days, unless the attending physician or practitioner documents in the resident's record why the resident does not need to be seen this frequently.

(d) The physician or practitioner shall establish and follow a schedule alternating visits.

(e) Each visit and evaluation shall be documented in the resident's record.

(3) Policies and Procedures.

There shall be policies and procedures that provide for:

(a) Access to physician services in case of medical emergency or when the attending physician is not available;

(b) Names and telephone numbers of on-call physicians in the health services supervisor's office;

(c) Reevaluation of the resident and review of care and treatment orders when there is a change of attending physician which shall be completed within 15 days of such change.

(4) Non-Physician Practitioners.

The following practitioners may render medical services according to state law:

(a) Nurse practitioners licensed to practice in the state of Utah;

(b) Physicians' assistants working under the supervision of a licensed physician and performing only those selected diagnostic and therapeutic tasks identified in Rules and Regulations and Standards for Utilization of Physician Assistants.

(5) Physician Orders and Notes.

(a) The following items shall be part of the treatment record and shall be signed and dated by a physician:

(i) Admission orders;

(ii) Medication, treatment, therapy, laboratory, and diet orders;

(iii) History and physical examinations;

(iv) Physician's progress notes;

(v) The discharge summary;

(vi) All discharge orders;

(b) All telephone orders shall be recorded immediately and include:

(i) date and time of order;

(ii) the receiver's signature and title; and

(iii) the order shall be countersigned and dated within 15 days by the physician who prescribed the order.

(c) The attending physician shall complete the resident's

medical record within 60 days of the resident's discharge, transfer, or death.

(6) Notification of Physician.

(a) The attending physician shall be notified promptly upon:

(i) Admission of the resident;

(ii) A sudden and/or marked adverse change in the resident's signs, symptoms, or behavior;

(iii) Any significant weight change in a 30-day period unless the resident's physician stipulates another parameter in writing;

(iv) Any adverse response or reaction by a resident to a medication or treatment;

(v) Any error in medication administration or treatment;

(vi) The discovery of a decubitus ulcer, the beginning of treatment, and if treatment is not effective. Notification shall be documented.

(b) The physician shall be notified if the facility is unable to obtain or administer drugs, equipment, supplies, or services promptly as prescribed. If the attending physician or his designee is not readily available, emergency medical care shall be provided. The telephone numbers of the emergency care physician shall be posted at the control station.

(c) All attempts to notify physicians shall be noted in the resident's record including the time and method of communication and the name of the person acknowledging contact, if any.

R432-200-15. Nursing Care.

(1) Organization.

(a) Each facility shall provide nursing care services commensurate with the needs of the residents served.

(b) All licensed nursing personnel shall maintain current Utah licenses to practice nursing.

(2) Responsibilities of the Health Services Supervisor.

The health services supervisor shall have the following responsibilities and comply with R432-1-3(55):

(a) Direct the implementation of physician's orders;

(b) Plan and direct the delivery of nursing care, treatments, procedures, and other services to assure that each resident's needs are met;

(c) Review the health care needs of each resident admitted to the facility and formulate with other professional staff a resident care plan according to the attending physician's orders;

(d) Review the medication system for completeness of information, accuracy in the transcription of physician's orders, and adherence to stop-order policies;

(e) Ensure that nursing notes describe the care rendered including the resident's response. Instruct staff on the legal requirements of charting;

(f) Supervise clinical staff to assure they perform restorative measures in their daily care of residents;

(g) Teach and coordinate habilitative and rehabilitative care to promote and maintain optimal physical and mental functioning of the resident;

(h) Keep the administrator and attending physician informed of significant changes in the resident's health status;

(i) Plan with the physician, family, and health-related agencies the care of the resident upon discharge;

(j) Coordinate resident services through the quality assurance committees (see R432-200-10);

(k) Assign qualified supervisory and supportive staff throughout the day and night to assure that the health needs of residents are met;

(l) Develop written job descriptions for all health service personnel and orient all new personnel to the facility and their duties and responsibilities;

(m) Evaluate and document the performance of each member of the staff at least annually. This evaluation shall be

available for Departmental review;

(n) Plan and conduct documented orientation and in-service programs for staff.

(3) Required Staffing Hours.

(a) Any facility that provides nursing care shall provide at least two hours (120 minutes) of nursing-staff coverage (RN + LPN + Aides) per resident per 24 hours of which 20 percent or 24 minutes per resident shall be provided by licensed staff (RN + LPN).

(b) Facilities providing rehabilitative or habilitative care shall:

(i) Provide adequate staff care and supervision to meet the resident's needs based on the resident-care plan, or;

(ii) Conform to the specific program requirements in the appropriate supplement.

(c) The above requirements are minimum only. Additional staff may be necessary to ensure adequate coverage in the event of staff illness, turnover, sudden increase in resident population, or similar event.

(d) Facilities that participate in the Medicare/Medicaid programs shall, as a condition of such participation, meet the staffing standards approved through administrative rule.

(4) Nursing or Health Care Services.

(a) The health services procedure manual shall be reviewed and updated annually by the health services supervisor.

(b) The manual shall be accessible to all clinical staff and available for review by the Department.

(c) The procedures shall address the following:

(i) Bathing;

(ii) Positioning;

(iii) Enema administration;

(iv) Decubitus prevention and care;

(v) Bed making;

(vi) Isolation procedures;

(vii) Clinitest procedures;

(viii) Laboratory requisitions;

(ix) Telephone orders;

(x) Charting;

(xi) Rehabilitative nursing;

(xii) Diets and feeding residents;

(xiii) Oral hygiene and denture care;

(xiv) Naso-gastric tube insertion and care (by registered nurses, LPNs, with appropriate training, or physicians only).

(5) Measures to Reduce Incontinence.

Measures shall be implemented to prevent and reduce incontinence for each resident.

(a) There shall be a written assessment by a licensed nurse to determine the resident's ability to participate in a bowel and bladder management program.

(b) An individualized plan for each incontinent resident shall begin within two weeks of the initial assessment.

(c) A weekly evaluation of the resident's performance in the bowel/bladder management program shall be recorded in the resident's record by a licensed nurse.

(d) Fluid intake and output shall be recorded for each resident as ordered by the physician or charge nurse.

(i) Intake and output records shall be evaluated at least weekly and each evaluation shall be included in the resident's record;

(ii) Physician's or nurse's orders shall be reevaluated periodically.

(6) Rehabilitative Nursing.

Nursing personnel shall be trained in rehabilitative nursing.

(a) Rehabilitative nursing services shall be performed daily for residents who require such services and shall be documented in the resident's record when provided.

(b) Rehabilitative services shall be provided to maintain function or to improve the resident's ability to carry out the

activities of daily living.

(c) Rehabilitative nursing services shall include the following:

- (i) Turning and positioning of residents;
- (ii) Assisting residents to ambulate;
- (iii) Improving resident's range of motion;
- (iv) Restorative feeding;
- (v) Bowel and bladder retraining;
- (vi) Teaching residents self-care skills;
- (vii) Teaching residents transferring skills;
- (viii) Teaching residents self-administration of medications, as appropriate;
- (ix) Taking measures to prevent secondary disabilities such as contractions and decubitus ulcers.

R432-200-16. General Resident Care Policies.

(1) Each resident shall be treated as an individual with dignity and respect in accordance with Residents' Rights (R432-200-12).

(2) Each facility shall develop and implement resident care policies to be reviewed annually by the health services supervisor.

(3) These policies shall address the following:

(a) Each resident upon admission shall be oriented to the facility, services, and staff.

(b) Each admission shall comply with R432-200-13(1).

(c) Each resident shall receive care to ensure good personal hygiene. This care shall include bathing, oral hygiene, shampoo and hair care, shaving or beard trimming, fingernail and toenail care.

(d) Linens and other items in contact with the resident shall be changed weekly or as the item is soiled.

(e) Each resident shall be encouraged and assisted to achieve and maintain the highest level of functioning and independence including:

(i) teaching the resident self-care,

(ii) assisting residents to adjust to their disabilities and prosthetic devices,

(iii) directing residents in prescribed therapy exercises, and

(iv) redirecting residents interests as necessary.

(f) Residents must be reevaluated annually to determine if a less restrictive setting might be more appropriate to help them achieve independence.

(g) Each resident shall receive care and treatment to ensure the prevention of decubiti, contractions, and deformities.

(h) Each resident shall be provided with good nutrition and adequate fluids for hydration.

(i) All residents shall have ready access to water and drinking glasses;

(ii) Residents unable to feed themselves shall be assisted to eat in a prompt, orderly manner;

(iii) Residents shall be provided with adapted equipment to assist in eating and drinking.

(i) Visual privacy shall be provided for each resident during treatments and personal care.

(j) Call lights or signals (where required) shall be answered promptly.

(k) Humidifier bottles on oxygen equipment shall be sterile and changed every 24 hours or at the manufacturers direction.

(4) Notification of Family.

The person in charge shall immediately notify the resident's family or guardian of any accident, injury, or adverse change in the resident's condition after the first attempt to notify the physician. This notification shall be documented in the resident's record.

R432-200-17. Resident-Care Plans.

(1) General Provisions.

(a) A written resident-care plan, coordinated with nursing

and other services, shall be initiated for each resident upon admission.

(b) The resident-care plan shall be personalized and indicate measurable and time-limited objectives, the actual plan of care, and the professional discipline responsible for each element of care.

(c) The resident care plan shall be developed, reviewed, revised, and updated at least annually through conferences with all professionals involved in the resident's care. Such conferences shall be documented.

(d) Each resident's care shall be based on this plan.

(e) The resident-care plan shall be available to all personnel who care for the resident.

(f) The resident and family shall participate in the development and review of the resident's plan.

(g) Upon transfer or discharge of the resident, relevant information from the resident-care plan shall be available to the responsible institution or agency.

(h) A licensed nurse or other clinical specialist, where appropriate, shall summarize, each month, the resident's status and problems identified in the resident-care plan.

(2) Resident-Care Plans Contents.

The resident-care plan shall include at least the following:

(a) Name, age, and sex of resident;

(b) Diagnosis, symptoms, complaints;

(c) A description of the functional level of the individual;

(d) Care objectives and time frames for accomplishment, reevaluation, and completion;

(e) Discipline or person responsible for each objective;

(f) Discharge plan;

(g) Date of admission;

(h) Name of attending physician or medical practitioner.

R432-200-18. Medication Administration.

(1) Standing Orders.

Standing orders for medications, treatments, and laboratory procedures shall not be used. All orders shall be written for the individual resident.

(2) Administration of Medication and Treatments.

Medication and treatment shall be administered as follows:

(a) No medication or treatment shall be administered except on the order of a person lawfully authorized to give such order.

(b) Medications and treatments shall be administered as prescribed and according to facility policy.

(c) All medications and treatments shall be administered by licensed medical or licensed nursing personnel. Student doctors and nurses may administer medication and treatment only in the course of study and when supervised by a licensed instructor or designated staff.

(d) Monitoring of vital signs and other observations done in conjunction with the administration of medication shall be carried out as ordered by the physician or practitioner and as indicated by accepted professional practice.

(e) Preparation of doses for more than one scheduled time of administration shall not be permitted.

(f) Medication shall be administered when ordered or as soon thereafter as possible but no more than two hours after the dose has been prepared.

(g) Medication shall be administered by the same person who prepared the dose for administration.

(h) Residents shall be identified prior to the administration of any drug or treatment.

(i) No medication shall be used for any resident other than the resident for whom it was prescribed.

(j) If the person who prescribed a medication does not limit the duration of the drug order or the number of doses, the facility's automatic stop-order policy shall indicate how long a drug may be administered. The prescriber shall be notified

before the medication is discontinued.

(k) All orders for treatment or therapy shall contain:

- (i) the name of the treatment or therapy,
- (ii) the frequency and time to be administered,
- (iii) the length of time the treatment or therapy is to continue,
- (iv) the name and professional title of the practitioner who gave the order,
- (v) the date of order, and
- (vi) signature of the person prescribing the treatment or therapy.

(l) All nursing personnel shall comply with the provisions for administration of medication according to standards and ethics of the profession.

(m) Injectable medications shall be administered only by authorized persons.

(i) If a physician certifies that a resident is capable of administering his own insulin or oral medications, the resident may self-inject the prescribed insulin or self-administer the prescribed medications.

(ii) The physician's order, authorizing the resident's self-administration of medications, shall be documented and available for Departmental review.

R432-200-19. Behavior Management and Restraint Policy.
See R432-150-14.

R432-200-20. Resident Care Equipment.

(1) The facility shall provide equipment, in good working order, to meet the needs of residents.

(2) Disposable and single-use items shall be properly disposed of after use.

(3) Resident care equipment shall include at least the following:

- (a) Self-help ambulation devices such as wheelchairs, walkers, and other devices deemed necessary in the resident plan of care. Facility policy may require that residents obtain their own equipment for long-term use;
- (b) Blood pressure apparatus and stethoscopes, appropriate to the needs and number of residents;
- (c) Thermometers appropriate to the needs of residents;
- (d) Weight scales to weigh all residents;
- (e) Bedpans, urinals, and equipment to clean them;
- (f) Water pitchers, drinking glasses, and resident gowns;
- (g) Drug service trays;
- (h) Access to emergency oxygen including equipment for its administration;
- (i) Emesis basins;
- (j) Linens including sheets, blankets, bath towels, and wash cloths for not less than three complete changes for the facility's licensed bed capacity. There shall be a bedspread for each resident bed;
- (k) Personal items including toothbrush, comb, hair brush, soap for bathing and showering, denture cups, shaving apparatus, and shampoo;
- (l) An individual chart for each resident;
- (m) Gloves (sterile and unsterile);
- (n) Ice bags.

R432-200-21. Pharmacy Service.

The facility shall make provision for pharmacy service.

(1) This service shall be under the direction of a qualified pharmacist currently licensed in the state of Utah.

(2) The pharmacist may be retained by contract.

(3) The pharmacist shall develop policies, direct, supervise and assume responsibility for any pharmacy services offered in the facility.

(4) Pharmacy services shall meet R432-150-19.

R432-200-22. Dietary Services.

(1) Organization.

(a) There shall be an organized dietary service that provides safe, appetizing, and nutritional food service to residents.

(b) The service shall be under the supervision of a qualified dietetic supervisor or consultant.

(c) If a facility contracts with an outside food management company, the company shall comply with all applicable requirements of these rules.

(2) See R432-150-24.

R432-200-23. Social Services.

(1) The facility shall provide social services which assist staff, residents, and residents' families to understand and cope with residents' personal, emotional, and related health and environmental problems.

(2) This service may be provided by a consultant.

(3) See R432-150-17.

(4) Responsibilities.

Whether provided directly by the facility or by agreement with other agencies, social service personnel shall:

(a) Provide services to maximize each resident's ability to adjust to the social and emotional aspects of their condition, treatments, and continued stay in the facility;

(b) Participate in ongoing discharge planning to guarantee continuity of care;

(c) Initiate referrals to official agencies when the resident needs financial assistance;

(d) Maintain appropriate liaison with the family or other responsible person concerning the resident's placement and rights;

(e) Preserve the dignity and rights of each resident;

(f) Maintain records, including a social history and social-services-needs evaluation, (updated annually);

(g) Integrate social services with other elements of the resident-care plan.

R432-200-24. Recreation Services.

(1) There shall be an organized resident activity program for the group and for each resident in the facility.

(2) See R432-150-20.

R432-200-25. Laboratory and Radiology Services.

(1) The facility shall make provision for laboratory and radiology services.

(2) See R432-150-18, Laboratory Services, and R432-150-23, Ancillary Health Services.

R432-200-26. Dental Services.

The facility shall make provision for annual and emergency dental care for residents. Such provisions shall include:

(1) Developing oral hygiene policies and procedures with input from dentists;

(2) Presenting oral hygiene in-service programs by knowledgeable persons to both staff and residents;

(3) Allowing resident's freedom of choice in selecting their own private dentists;

(4) Developing an agreement with a dental service for those residents who do not have a personal dentist;

(5) Arranging transportation to and from the dentist's office.

R432-200-27. Specialized Rehabilitative Services.

(1) Organization.

(a) A facility that provides specialized rehabilitative services may offer these services directly or through agreements with outside agencies or qualified therapists.

(b) Services may be offered either on-site or off-site.

(c) If the facility does not provide specialized rehabilitative services, the facility shall neither admit nor retain residents in need of such services.

(2) Personnel.

(a) Specialized rehabilitative services shall be provided by qualified licensed therapists in accordance with Utah law and accepted practices.

(b) Therapists shall offer the full scope of services to the resident.

(c) All therapy assistants shall be qualified and shall work under the direct supervision of a licensed therapist at all times.

(d) Speech pathologists shall be licensed under Title 58, Chapter 41.

(3) Policies and Procedures.

(a) Services shall be provided only on the written order of an attending physician.

(b) Safe and adequate space and equipment shall be available commensurate with the needs of residents.

(c) An appropriate plan of treatment shall be initiated by an attending physician and developed by the therapist in consultation with the nursing staff.

(d) An initial progress report shall be submitted to the attending physician two weeks after treatment has begun or when specified by the physician.

(e) The physician and therapist shall review and evaluate the plan of treatment monthly, unless, the physician recommends an alternate schedule in writing.

(f) There shall be documentation in the resident's record of the specialized plan of treatment.

R432-200-28. Medical Records.

(1) Organization.

(a) Medical records shall be complete, accurately documented, and systematically organized to facilitate retrieval and compilation.

(b) There shall be written policies and procedures to accomplish these purposes.

(c) The medical record service shall be under the direction of a registered record administrator (RRA) or an accredited record technician (ART).

(d) If an RRA or an ART is not employed at least part-time, the facility shall consult at least annually with an RRA or ART according to the needs of the facility.

(e) A designated individual in the facility shall be responsible for day-to-day record keeping.

(2) Retention and Storage.

(a) Provision shall be made for the filing, safe storage, and easy accessibility of medical records.

(i) The record and its contents shall be safeguarded from loss, defacement, tampering, fires, and floods.

(ii) Records shall be protected against access by unauthorized individuals.

(b) Medical records shall be retained for at least seven years after the last date of resident care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(c) All resident records shall be retained within the facility upon change of ownership.

(d) When a facility ceases operation, provision shall be made for appropriate safe storage and prompt retrieval of all medical records.

(3) Release of Information.

(a) There shall be written procedures for the use and removal of medical records and the release of information.

(b) Medical records shall be confidential.

(i) Information may be disclosed only to authorized persons in accordance with federal, state, and local laws.

(ii) Requests for other information which may identify the

resident (including photographs) shall require the written consent of the resident or guardian if the resident is judged incompetent.

(c) Authorized representatives of the Department may review records to determine compliance with licensure rules and standards.

(4) Physician or Licensed Practitioner Documentation

Rubber-stamp signatures may be used in lieu of the written signature of the physician or licensed practitioner if the facility retains the signator's signed statement acknowledging ultimate responsibility for the use of the stamp and specifying the conditions for its use.

(5) Medical Record.

(a) Records shall be permanent (typewritten or hand written legibly in ink) and capable of being photocopied.

(b) Records shall be kept for all residents admitted or accepted for treatment and care.

(c) Records shall be kept current and shall conform to good medical and professional practice based on the service provided to each resident.

(d) All records of discharged residents shall be completed and filed within 60 days of discharge.

(e) All entries shall be authenticated including date, name or identified initials, and title of persons making entries.

(6) Contents of the Medical Record

A facility shall maintain an individual medical record for each resident which shall include:

(a) Admission record (face sheet) including the resident's name; social security number; age at admission; birth date; date of admission; name, address, telephone number of spouse, guardian, authorized representative, person or agency responsible for the resident; and name, address, and telephone number of the attending physician;

(b) Admission and subsequent diagnoses and any allergies;

(c) Reports of physical examinations signed and dated by the physician;

(d) Signed and dated physician orders for drugs, treatments, and diet;

(e) Signed and dated progress notes including but not limited to:

(i) Records made by staff regarding the daily care of the resident;

(ii) Informative progress notes by appropriate staff recording changes in the resident's condition. Progress notes shall describe the resident's needs and response to care and treatment, and shall be in accord with the plan of care;

(iii) Documentation of administration of all "PRN" medications and the reason for withholding scheduled medications;

(iv) Documentation of use of restraints in accordance with facility policy including type of restraint, reason for use, time of application, and removal;

(v) Documentation of oxygen administration;

(vi) Temperature, pulse, respiration, blood pressure, height, and weight notations, when required;

(vii) Laboratory reports of all tests prescribed and completed;

(viii) Reports of all x-rays prescribed and completed;

(ix) Records of the course of all therapeutic treatments;

(x) Discharge summary including a brief narrative of conditions and diagnoses of the resident and final disposition;

(xi) A copy of the transfer form when the resident is transferred to another health care facility;

(xii) Resident-care plan.

R432-200-29. Housekeeping Services.

Organization.

(1) There shall be adequate housekeeping services to maintain a clean sanitary and healthful environment in the

facility.

(2) See R432-150-26.

R432-200-30. Laundry Services.

(1) There shall be adequate laundry service to provide clean linens and clothing for residents and staff.

(2) See R432-150-27.

R432-200-31. General Maintenance.

(1) Each facility shall develop and implement maintenance policies and procedures that shall be reviewed and updated annually.

(2) See R432-150-28.

R432-200-32. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities

October 1, 2011

26-21-5

Notice of Continuation September 15, 2016

26-21-6

R432. Health, Family Health and Preparedness, Licensing.**R432-300. Small Health Care Facility - Type N.****R432-300-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-300-2. Purpose.

The purpose of this rule is to establish standards for protection of the health, safety, and welfare of individuals who receive nursing care in privately owned homes.

R432-300-3. Time for Compliance.

All facilities governed by these rules shall be in full compliance at the time of licensing.

R432-300-4. Definitions.

- (1) Refer to common definitions R432-1-3, in addition;
- (2) "Dependent" means a person who meets one or all of the following criteria:
 - (a) requires inpatient hospital or 24 hour continual nursing care that will last longer than 15 calendar days after the day on which the nursing care begins;
 - (b) is unable to evacuate from the facility without the physical assistance of two persons.
- (3) "Health care setting" means a health care facility or agency, either public or private, that is involved in the provision or delivery of nursing care.
- (4) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of a resident.
- (5) "Owner or licensee" means a licensed nurse who resides in the facility and provides daily direct care during daytime hours to residents in the facility as opposed to simply working a duty shift in the facility.
- (6) "Semi-independent" means a person who is:
 - (a) physically disabled, but able to direct his own care; or
 - (b) cognitively impaired or physically disabled, but able to evacuate from the facility with the physical assistance of one person.
- (7) "Significant change" means a major change in a resident's status that is not self-limiting, impacts on more than one area of the resident's health status, and requires interdisciplinary review or revision of the service plan.
- (8) "Small Health Care Facility - Type N" means a home or a residence occupied by the licensee, who is a licensed nurse, that provides protected living arrangements plus nursing care and services on a daily basis for two to three individuals unrelated to the licensee.

R432-300-5. License Required.

A license is required to operate a Small Health Care Facility Type N, see R432-2.

R432-300-6. Criteria for Type N Facility.

The licensee must meet the following criteria to obtain a license for a Small Health Care Facility - Type N:

- (1) provide care in a residence where the licensee lives full time;
- (2) meet local zoning requirements to allow the facility to be operated at the given address;
- (3) obtain a certificate of fire clearance annually from the local fire marshal having jurisdiction;
- (4) have a physician assessment and approval for each resident's admission;
- (5) provide daily, licensed nursing care; and
- (6) provide 24-hour direct care staff available on the premises.

R432-300-7. Physical Environment.

- (1) The licensee must provide comfortable living accommodations and privacy for residents who live in the facility.
 - (2) Bedrooms may be private or semi-private.
 - (a) Single-bed rooms must have a minimum of 100 square feet of floor space.
 - (b) Multiple-bed rooms must have a minimum of 80 square feet of floor space per bed and are limited to two beds.
 - (c) Beds shall be placed at least three feet away from each other.
 - (d) The licensee's family members or staff shall not share sleeping quarters with residents.
 - (e) Each resident shall have a separate twin size or larger sized bed.
 - (f) No room ordinarily used for other purposes (such as a hall, corridor, unfinished attic, garage, storage area, shed or similar detached building) may be used as a sleeping room for a resident.
 - (g) Each bedroom must have light and ventilation.
 - (h) Each bedroom must have a window to the outside which opens easily. Windows must have insect screens.
 - (i) Each bedroom must have a closet or space suitable for hanging clothing and personal belongings.
 - (j) Each bedroom and toilet room must have a trash container.
 - (k) The licensee must make available reading lamps in each resident room according to the individual needs of each resident.
 - (3) Toilets and bathrooms must provide privacy, be well-ventilated, and be accessible to and usable by all persons accepted for care.
 - (a) Toilets, tubs, and showers must have ADAAG approved grab bars.
 - (b) If the licensee admits a resident with disabilities, the bath, shower, sink, and toilet must be equipped for use by persons with disabilities in accordance with ADAAG.
 - (4) Heating, air conditioning, and ventilating systems must provide comfortable temperatures for the resident.
 - (a) Heating systems must be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.
 - (b) Cooling systems must be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.
 - (c) Facilities licensed after July 1, 1998, must comply with ventilation and minimum total air change requirements as outlined in R432-6-22 Table 2, which is adopted and incorporated by reference.
 - (5) Residents may be housed on the main floor only, unless an outside exit leading to the ground grade level is provided from any upper or lower levels.
 - (6) At least one building entrance shall be accessible to persons with physical disabilities.
- R432-300-8. Administration and Organization.**
- (1) The licensee is responsible for compliance with Utah law and licensing requirements, management, operation, and control of the facility.
 - (2) The licensee is responsible to establish and implement facility policies and procedures. Policies and procedures must reflect current facility practice.
 - (3) The licensee must be a licensed nurse with at least two years experience working in a health care setting, and must provide nursing coverage on a daily basis during daytime hours of operation. Facilities licensed prior to July 1, 1998, that do not have a licensed nurse residing in the facility, must provide 24 hour certified nurse aide coverage.
 - (4) The licensee must employ sufficient staff to meet the needs of the residents.
 - (5) All employees must be 18 years of age, and

successfully complete an orientation program in order to provide personal care and demonstrate competency.

(a) The licensee must orient employees to the residents' daily routine and train employees to assist the residents in activities of daily living.

(b) Employees must be registered, certified or licensed as required by the Utah Department of Commerce.

(c) Registration, licenses and certificates must be current, filed in the personnel files, and presented to the licensee within 45-days of employment.

(6) The licensee is responsible to establish and implement written policies and procedures for a personnel health program to protect the health and safety of personnel and clients.

(a) Each employee must, upon hire, complete a health evaluation that includes a health inventory.

(b) The health inventory must document the employee's health history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) The licensee must report all infections and communicable diseases reportable by law to the local health department in accordance with R386-702-2.

R432-300-9. Facility Records.

(1) The licensee must maintain accurate and complete records that are filed, stored safely, and are easily accessible to staff and the Department.

(2) Records must be protected against access by unauthorized individuals.

(3) The licensee must maintain personnel records for each employee and retain such records for at least three years following termination of employment. Personnel records must include the following:

(a) an employee application;

(b) the date of employment and initial policies and procedures orientation;

(c) the termination date;

(d) the reason for leaving;

(e) documentation of cardio-pulmonary resuscitation, first aid, and emergency procedures training;

(f) a health inventory;

(g) a food handlers permit;

(h) TB skin test documentation;

(i) documentation of criminal background check; and

(j) certifications, registration, and licenses as required.

(4) The licensee must maintain in the facility a separate record for each resident that includes the following:

(a) the resident's name, date of birth, and last address;

(b) the name, address, and telephone number of the person who administers and obtains medications, if this is not facility staff;

(c) the name, address, and telephone number of the individual to be notified in case of accident or death;

(d) the name, address, and telephone number of a physician and dentist to be called in an emergency;

(e) an admission diagnoses and reason for admission;

(f) any known allergies;

(g) the admission agreement;

(h) a copy of an advanced directive or living will initiated by the resident;

(i) a physician's assessment;

(j) a resident assessment;

(k) a written plan of care;

(l) physician orders;

(m) daily nursing notes including temperature, pulse, respirations, blood pressure, height, and weight notations when indicated or as needed due to a change in the resident's condition;

(n) if entrusted to the facility, a record of the resident's cash resources and valuables; and

(o) incident and accident reports.

(5) Resident records must be retained for at least seven years following discharge.

R432-300-10. Acceptance and Retention of Residents.

(1) A Type N Small Health Care facility may accept semi-dependent residents.

(a) The licensee may accept one dependent resident only if the licensee has equipment and additional staff available to assist the dependent resident in the event of a facility emergency evacuation.

(b) The licensee must establish acceptance criteria which includes:

(i) the resident's health needs;

(ii) the residents's ability to perform activities of daily living; and

(iii) the ability of the facility to address the residents needs.

(2) A resident shall not be accepted nor retained by a Type "N" Small Health Care Facility when:

(a) The resident has active tuberculosis or serious communicable diseases;

(b) The resident requires inpatient hospital care; or

(c) The resident has a mental illness that manifests behavior which is suicidal, assaultive, or harmful to self or others.

(3) The licensee must request that the family or responsible person relocate the resident within seven days if the resident requires care which cannot be provided in the Type N facility.

R432-300-11. Transfer or Discharge Requirements.

(1) The licensee may discharge, transfer, or evict a resident for one or more of the following reasons:

(a) The facility is no longer able to meet the resident's needs.

(b) The resident fails to pay for services as required by the admission agreement.

(c) The resident fails to comply with written policies or rules of the facility.

(d) The resident wishes to transfer.

(e) The facility ceases operation.

(2) Prior to transferring or discharging a resident, the licensee must serve a transfer or discharge notice to the resident and the resident's responsible person.

(a) The notice must be either hand-delivered or sent by certified mail.

(b) The notice must be made at least 30 days before the day on which the licensee plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:

(i) the safety or health of persons in the facility is endangered; or

(ii) an immediate transfer or discharge is required by the

resident's urgent medical needs.

- (3) The notice of transfer or discharge must:
 - (a) be in writing with a copy placed in the resident file;
 - (b) be phrased in a manner and in a language the resident or the resident's responsible person can understand;
 - (c) detail the reasons for transfer or discharge;
 - (d) state the effective date of transfer or discharge;
 - (e) state the location to which the resident will be transferred or discharged;
 - (f) state that the resident or responsible party may request a conference to discuss the transfer or discharge; and
 - (g) contain the following information:
 - (i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;
 - (ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and
 - (iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(4) The licensee must provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.

(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the licensee shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.

(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.

(b) Participants in the conference shall include the licensee, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

R432-300-12. Personal Physician.

(1) Each resident must have a personal physician. The physician's assessment must be completed prior to admission.

(2) The physician's signed assessment shall document:

- (a) that the resident is capable of functioning in a Type N Small Health Care Facility;
- (b) that the resident is free of communicable diseases or any condition which would prevent admission to the facility;
- (c) a list of current medications including dosage, time of administration, route, and assistance required;
- (d) type of diet and restrictions or special instructions;
- (e) any known allergies; and
- (f) any physical or mental limitations, or restrictions on activity.

R432-300-13. Nursing Care.

(1) Each Type N facility must provide nursing care services to meet the needs of the residents.

(2) A licensed nurse must be on-site working directly with residents on a daily basis in accordance with each resident's care plan and individual needs.

(3) Nursing practice must be in accordance with the Utah Nurse Practice Act Section 58-31b-102(10).

(4) Licensed nurses have the following responsibilities:

- (a) direct the implementation of physician's orders;
- (b) develop and implement an individualized care plan for

each resident within seven calendar days of admission, and direct the delivery of nursing care, treatments, procedures, and other services to meet the needs of the residents;

(c) review and update at least every six months the health care needs of each resident admitted to the facility and develop resident care plans according to the resident's needs and the physician's orders;

(d) review each resident's medication regimen as needed and immediately after medication changes to ensure accuracy;

(e) ensure that nursing notes describe the care rendered including the resident's response;

(f) supervise staff to assure they perform restorative measures in their daily care of residents;

(g) teach and coordinate resident care and rehabilitative care to promote and maintain optimal physical and mental functioning of the resident; and

(h) plan and conduct documented orientation and in-service programs for staff.

(5) The licensed nurse must develop and maintain a current health services policy and procedure manual that is to be reviewed and updated by the licensed nurse at least annually.

(a) The manual must be accessible to all staff and be available for review by the Department.

(b) The policy and procedure manual must address the following:

- (i) bathing;
- (ii) positioning;
- (iii) enema administration;
- (iv) decubitus prevention and care;
- (v) bed making;
- (vi) isolation procedures;
- (vii) blood sugar monitoring procedures;
- (viii) telephone orders;
- (ix) charting;
- (x) rehabilitative nursing;
- (xi) diets and feeding residents;
- (xii) oral hygiene and denture care;
- (xiii) medication administration;
- (xiv) Alzheimer's/dementia care;
- (xv) universal precautions and blood-borne pathogens; and
- (xvi) housekeeping and cleaning procedures.

(6) Each resident's care plan must include measures to prevent and reduce incontinence.

(a) The licensed nurse must assess each resident to determine the resident's ability to participate in a bowel and bladder management program.

(b) An individualized plan for each incontinent resident shall begin within two weeks of the initial assessment.

(c) The licensed nurse must document a weekly evaluation of the resident's performance in the bowel/bladder management program.

(d) Fluid intake and output must be recorded for each resident and evaluated at least weekly when ordered by a physician or nurse.

(7) The licensee must ensure that staff are trained in rehabilitative nursing.

(a) The licensee must provide daily and document rehabilitative nursing services for residents who require such services.

(b) Rehabilitative nursing services shall include the following:

- (i) turning and positioning of residents as per physician's or nurse's orders;
- (ii) assisting residents to ambulate;
- (iii) improving resident's range of motion;
- (iv) restorative feeding;
- (v) bowel and bladder retraining;
- (vi) teaching residents self-care skills;
- (vii) teaching residents transferring skills; and

(viii) taking measures to prevent secondary disabilities such as contractures and decubitus ulcers.

R432-300-14. General Resident Care Policies.

(1) Each resident must be treated as an individual with dignity and respect in accordance with Residents' Rights R432-270-9.

(2) The licensee is responsible to develop and implement resident care policies. These policies must address the following:

(a) The licensee must orient each resident upon admission to the facility, services, and staff.

(b) Each resident must receive care to ensure good personal hygiene, including bathing, oral hygiene, shampoo and hair care, shaving or beard trimming, fingernail and toenail care.

(c) Linens and other items in contact with the resident must be changed weekly or as the item is soiled.

(d) The licensee is responsible to encourage and assist each resident to achieve and maintain the highest level of functioning and independence including:

(i) teaching the resident self-care,

(ii) assisting residents to adjust to their disabilities and prosthetic devices,

(iii) directing residents in prescribed therapy exercises; and

(iv) redirecting residents interests as necessary.

(e) Each resident must receive care and treatment to ensure the prevention of decubitus ulcers, contractures, and deformities.

(f) Each resident must receive good nutrition and adequate fluids for hydration.

(i) All residents must have ready access to water and drinking glasses.

(ii) Residents unable to feed themselves shall be assisted to eat in a prompt, orderly manner.

(iii) Residents who require assistance with eating or drinking must be provided with adaptive equipment.

(g) Each resident has the right to visual privacy during treatments and personal care. Visual privacy may be provided by privacy curtains or portable screens.

(h) Facility staff must answer call lights or monitoring devices promptly.

(3) The licensee must notify the resident's responsible person and physician of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the Type N facility license. This notification must be documented in the resident's record.

(4) The licensee is responsible to assist residents in making arrangements for medical and dental care including transportation to and from the medical or dental facility.

(5) The licensee must document and make available for Department review every accident or incident causing injury to a resident or employee. The documentation must include appropriate corrective action.

(6) The licensee is responsible to document and implement a quality improvement process that at least quarterly identifies problems, implements corrective actions, and evaluates the effectiveness of the corrective actions.

R432-300-15. Medications.

(1) A licensed health care professional must upon admission and at least every six months thereafter assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided must be documented on a Department approved form in each resident's service plan.

(2) Each resident's medication program must be administered by means of one of the methods as described in (a) through (c) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the licensee must assess each resident's ability to safely have medications in the unit. If safety is a factor, the resident must keep medications in a locked container in the unit.

(b) The resident requires assistance from facility staff to administer medications. Facility staff may assist residents who self-medicate by:

(i) reminding the resident to take the medication;

(ii) opening medication containers;

(iii) reading the instructions on container labels;

(iv) checking the dosage against the label of the container;

(v) reassuring the resident that the dosage is correct;

(vi) observing that the resident takes the medication; and

(vii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(viii) Facility staff must document any staff assistance with medication administration including the type of medication and when it was taken by the resident.

(c) The resident's family or designated responsible person assists the resident with medication administration. Family members or a designated responsible person may set up medications in a package which identifies the medication and time to administer. If family members or a designated responsible person assists with medication administration, they must sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document the type of medication, the time administered, and the amount taken by the resident.

(3) Medication records must include the following information:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) the name of the medication, including prescribed dosage;

(d) the times and dates administered;

(e) the method of administration;

(f) signatures of staff or responsible persons administering the medication; and

(g) the review date.

(4) Any change in the dosage or schedule of medication administration must be ordered by the resident's licensed practitioner and be documented in the medication record. All facility staff or persons assisting with medication administration must be notified of the medication change.

(5) The licensee must have available in the facility a current pharmacological reference book with information on possible reactions and precautions to any medications taken by a resident.

(6) The resident's family and licensed practitioner must be notified if medications errors occur.

(7) Medications must be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, residents shall have timely access to the medication.

(b) Medications that require refrigeration must be stored separately from food items and at temperatures between 36 - 46 degrees F.

(8) The administration, storage, and handling of oxygen must comply with the requirements of the 1996 edition of NFPA 99, which is adopted and incorporated by reference.

(9) Facility policies must address the disposal of unused, outdated, or recalled medications.

(a) The licensee must return a resident's medication to the resident or to the resident's responsible person upon discharge.

(b) A licensed health care professional must document the return to the resident or the resident's responsible person of

medication stored in a central storage.

(c) Disposal of controlled substances must comply with the Pharmacy Practice Act, which is adopted and incorporated by reference.

R432-300-16. First Aid.

(1) The licensee must ensure that at least one staff person is on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation, and emergency procedures to ensure that each resident receives prompt first aid as needed. First aid training refers to any basic first aid course approved by the American Red Cross or Utah Emergency Medical Training Council.

(2) The licensee must ensure that a first aid kit is available at a specified location in the facility.

(3) The licensee must ensure that a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency is available at a specified location in the facility.

(4) Each facility must have an OSHA approved clean-up kit for blood borne pathogens.

R432-300-17. Activity Program.

(1) The licensee must provide activities for the residents to encourage independent functioning.

(2) The licensee must complete a resident interest survey and, with the resident's involvement, develop a monthly activity calendar.

(3) The activity program must include the residents' needs and interests to include:

- (a) socialization activities;
- (b) independent activities of daily living; and
- (c) physical activities;

(4) A resident may participate in community activities away from the facility.

R432-300-18. Food Service.

(1) The licensee must provide three meals a day plus snacks, seven days a week, to all residents.

(a) The licensee must maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.

(b) Meals must be served with no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.

(c) The facility food service must comply with the following:

(i) All food must be of good quality and be prepared by methods that conserve nutritive value, flavor, and appearance.

(ii) All food served to residents must be palatable, attractively served, and delivered to the resident at the appropriate temperature.

(iii) Powdered milk may be used as a beverage only upon the resident's request. It may be used in cooking and baking at any time.

(2) A different menu must be planned and followed for each day of the week.

(a) All menus must be approved and signed by a certified dietitian.

(b) Cycle menus shall cover a minimum of three weeks.

(c) The current week's menu shall be posted for residents' viewing.

(d) Substitutions to the menu that are actually served to the residents must be recorded and retained for three months for review by the Department.

(3) Meals must be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(4) Residents shall be encouraged to eat their meals in the

dining room with other residents.

(5) The licensee must make available for review inspection reports by the local health department.

(6) If the licensee admits residents requiring therapeutic or special diets, an approved dietary manual must be available for reference when preparing meals. Dietitian consultation must be provided at least quarterly and documented for residents requiring therapeutic diets.

(7) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

(8) All personnel who prepare or serve food must have a current Food Handler's Permit.

(9) Food service must comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100, which is adopted and incorporated by reference.

R432-300-19. Housekeeping and Maintenance Services.

(1) The licensee must provide housekeeping and maintenance services to maintain a safe, clean, sanitary, and healthful environment.

(2) Entrances, exits, steps, and outside walkways must be maintained and kept free of ice, snow, and other hazards.

(3) The licensee must implement a cleaning schedule to ensure that furniture, bedding, linens, and equipment are cleaned periodically and before use by another resident.

(4) The licensee must control odors by maintaining cleanliness and proper ventilation. Deodorizers may not be used to cover odors caused by poor housekeeping or unsanitary conditions.

(5) The licensee must provide laundry services to meet the needs of the residents.

(6) The licensee must ensure that all cleaning agents, bleaches, pesticides, or other poisonous, dangerous or flammable materials are stored in a locked area to prevent unauthorized access.

R432-300-20. Pets.

(1) The licensee may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment must be kept clean.

(4) Small pets such as birds and hamsters must be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations.

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds must have procedures which prevent the transmission of psittacosis.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-300-21. Disaster and Emergency Preparedness.

(1) The licensee is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee is responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public

utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan must be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee must review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility fire extinguishing equipment;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations including specialized training to assist a dependent resident;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the residents.

(c) The licensee must develop, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) The licensee must ensure that staff and residents receive instruction and training in accordance with the plans to respond appropriately in an emergency. The licensee must:

(a) annually review the procedures with existing staff and residents and conduct unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The licensee must be in charge during an emergency. If not on the premises, the licensee must make every effort to report to the facility, relieve subordinates and take charge.

(7) The licensee must provide in-house equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The licensee must post the following information in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies,

and appropriate communication and emergency transport systems; and

(b) evacuation routes including the location of exits and fire extinguishers.

R432-300-22. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health care facilities

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26-21-5

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**R432. Health, Family Health and Preparedness, Licensing.
R432-650. End Stage Renal Disease Facility Rules.**

R432-650-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-650-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance for End Stage Renal Disease (ESRD) facilities in order to provide safe and effective services.

R432-650-3. Definitions.

(1) The definitions in R432-1-3 apply to this rule.

(2) "Interdisciplinary professional team" means a team of qualified professionals who are responsible for creating the Patient Long Term Care Program and Patient Care Plan. The qualifications are described in 42CFR 405.2137(a) and (b), 2008, which is adopted and incorporated by reference.

R432-650-4. Licensure.

License Required. See R432-2 and R432-3.

R432-650-5. Patient Care Services.

Each ESRD facility must comply with the conditions of participation set forth in the Code of Federal Regulations, Title 42, Part 405, Subpart U., 2008, which is adopted and incorporated by reference.

R432-650-6. Personnel Health.

(1) Each ESRD facility shall establish a written health surveillance and evaluation program for facility personnel commensurate with the services offered. The program must include applicable portions of:

- (a) The Communicable Disease Rule, R386-702;
- (b) Tuberculosis Control Rule, R388-804; and
- (c) OSHA guidelines for Bloodborne Pathogens, 29 CFR 1910.1030.

(2) All employees shall undergo a health status examination as prescribed in the health surveillance and evaluation program upon hiring and may not be assigned to patient care duties until they are determined to be able to safely discharge their duties.

(3) Each ESRD facility must test all employees who provide direct patient care for Hepatitis B within the first two weeks of beginning employment.

(4) 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.

R432-650-7. Required Staffing.

(1) Each patient shall be under the continuing supervision of a physician. A physician shall be available in medical emergency situations through a current telephone call roster readily accessible to the nursing staff.

(2) Physician assistants and advanced practice registered nurses may provide services in ESRD facilities in association with the supervising or consulting nephrologist, and in accordance with state law.

(3) Each ESRD facility shall provide sufficient qualified

clinical staff to meet patient care needs. A minimum of two clinical staff personnel, one a registered nurse for supervision of patient clinical care, shall be on duty whenever patients are receiving dialysis services.

(a) A registered nurse may not supervise the clinical care of more than 10 patients if arranged in an open setting, or 12 patients if arranged in three pods of four patients.

(b) A registered nurse may not supervise patient clinical care, or provide unsupervised patient clinical care until the nurse has completed training and demonstrated competency as determined by facility policy.

(c) Dialysis technicians and licensed practical nurses may not be assigned patient clinical care for more than four patients at a time.

(d) Dialysis technicians and licensed practical nurses must complete training and demonstrate competency according to facility policy prior to providing patient care.

(4) Each ESRD facility must orient all employees to specific job requirements and facility policies. The facility shall document initial and on-going employee orientation and training. Patient clinical care staff orientation and training shall include at least the following topics:

- (a) patient rights and responsibilities;
- (b) kidney disease processes;
- (c) hemodialysis process;
- (d) hemodialysis complications;
- (e) dialysis access and management;
- (f) psycho-social implications of dialysis on patient care;
- (g) nutritional requirements;
- (h) universal precautions;
- (i) use of the medical emergency kit;
- (j) use and function of facility equipment;
- (k) emergency procedures;
- (l) AAMI water treatment standards; and
- (m) dialyzer re-use procedures, if offered.

(5) A registered nurse may delegate the following patient care activities to licensed practical nurses or dialysis technicians:

- (a) cannulation of peripheral vascular access;
- (b) administration of intradermal lidocaine, intravenous heparin and intravenous normal saline; and
- (c) initiation, monitoring and discontinuation of the dialysis process.

(6) Each ESRD facility must ensure that all personnel are licensed, certified or registered as required by the Utah Department of Commerce.

R432-650-8. Patient Care Plan.

(1) Each patient must have a care plan that is developed and implemented by the interdisciplinary team with the patient's consent within one month of beginning treatment.

(2) Each patient who receives treatment for more than 90 days must have a long-term care program that is developed and implemented by the interdisciplinary team with the patient's participation.

R432-650-9. Emergency Equipment.

(1) Each ESRD facility must have available on-site a medical emergency kit containing medications, equipment and supplies. The medical director shall determine and approve the contents of the kit.

(2) Each ESRD facility must have available on-site an emergency supply of oxygen.

R432-650-10. Drug Storage.

(1) Each ESRD facility shall provide for controlled storage and supervised preparation and use of medications. Medications and food items may be stored in the same refrigerator if safely separated.

(a) Medications stored at room temperature shall be maintained within 59-80 degrees F (15-30 degrees C).

(b) Refrigerated medications shall be maintained within 36-46 degrees F (2-8 degrees C).

(c) Medications must be kept in the original container and may not be transferred to other containers.

(2) If a medication station is provided, the facility shall provide a work counter and hand washing facilities.

R432-650-11. Medical Records.

(1) Each ESRD facility must store and file medical records to allow for easy staff access.

(a) Medical records shall be safeguarded from loss, defacement, tampering, fires, and floods.

(b) Medical records shall be protected against access by unauthorized individuals.

(2) The licensee must retain medical records for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(3) All patient records shall be retained within the facility upon change of ownership.

R432-650-12. Water Quality.

(1) Water used for dialysis purposes shall comply with quality standards established by the Association for the Advancement of Medical Instrumentation (AAMI) as published in "Hemodialysis Systems," second edition, which is adopted and incorporated by reference.

(2) Each ESRD facility that utilizes in-center water systems must have bacteriologic quality analysis performed and documented at least monthly by a laboratory that adheres to AAMI standards.

(3) For home systems, the ESRD facility must conduct bacteriological quality analysis at least monthly using an approved home testing methodology as identified in the patient care plan.

(a) An alternate schedule of testing may be approved by the attending physician.

(b) The alternate schedule shall be specified in the patient care plan.

(4) If reverse osmosis or deionization devices are used for in-center or home systems, the ESRD facility must have chemical quality analysis performed and documented at least once every 12 months by a laboratory that adheres to AAMI standards.

(5) The ESRD facility must maintain and make available for Department review all water quality test results. In the case of home dialysis, test results shall become part of the patient record maintained by the ESRD facility.

R432-650-13. Continuous Quality Improvement Program.

(1) Each ESRD facility must implement a well-defined continuous quality improvement program to monitor and evaluate the quality of patient care services. The program shall be consistent with the scope of services offered and adhere to accepted standards of care associated with the renal dialysis community.

(2) The program shall include a review of patient care records, facility policies and practices to:

(a) identify and assess problems and concerns, or opportunities for improvement of patient care;

(b) implement actions to reduce or eliminate identified problems and concerns, and improve patient care; and

(c) document corrective actions and results.

(3) The administrator shall establish a committee to implement the continuous quality improvement program. The committee shall include the facility administrator or designee,

the medical director, the nursing supervisor, and other individuals as identified in the program.

(4) The committee must meet at least quarterly and keep minutes and related records, which shall be available for Department review.

(5) The continuous quality improvement program may include more than one facility in scope only when the facilities are organized under the same governing body and the program addresses problems, concerns and issues at the individual ESRD facility level.

R432-650-14. Physical Environment.

The following standards apply for new construction and remodeling of ESRD facilities:

(1) R432-4-1 through R432-4-22 is adopted and incorporated by reference.

(2) ESRD Facilities shall comply with NFPA 101 Life Safety Code, Chapter 20 except that an essential electrical system is not required.

(3) The treatment area may be an open area and shall be separate from the administrative and waiting area. Individual treatment areas must contain at least 80 square feet. Each treatment area shall have the capacity for privacy for each patient for treatment related procedures or personal care.

(4) The dialysis treatment area must include a nurses station designed to provide visual observation of the patient treatment area.

(5) There shall be at least one hand washing facility serving no more than eight stations. All hand washing stations shall be convenient to the nurses station and treatment areas.

(6) A separate blood borne infectious isolation patient treatment room shall be provided and shall:

(a) be fully enclosed;

(b) contain a handwash sink;

(c) contain windows to permit observation of the patient from the nurse station and other treatment areas;

(d) contain space for clean and soiled gowns and supplies; and

(e) be dedicated to patients with blood borne diseases and shall not be used by patients without blood borne diseases.

(7) If an airborne infectious isolation room is required to control airborne infection, the airborne infectious isolation room shall have a separate hand washing facility and comply with R386-702, Communicable Disease Rule, and other applicable standards determined in the pre-construction plan review process. The room shall be tightly sealed and all air from the room shall be exhausted. Exhaust air shall be a minimum of 125 cubic feet per minute greater than supply air.

(a) The airborne infectious isolation rooms may be used for patients without airborne communicable disease when not in use as an isolation room.

(8) If the ESRD facility provides home dialysis training, a private treatment room of at least 120 square feet is required for patients who are being trained to use dialysis equipment at home. The room shall contain a counter, hand washing facilities, and a separate drain for fluid disposal.

(9) Each ESRD facility must provide a clean work area that is separate from soiled work areas. If the area is used for preparing patient care items, it must contain a work counter, hand washing facilities, and storage facilities for clean and sterile supplies. If the area is used only for storage and holding as part of a system for distribution of clean and sterile materials, the work counter and hand washing facilities may be omitted.

(10) Each ESRD facility must provide a soiled work room that contains a hand washing sink, work counter, storage cabinets, waste receptacles and a soiled linen receptacle.

(11) If dialyzers are reused, a reprocessing room is required that is sized and equipped to perform the functions required and to include one-way flow of materials from soiled

to clean with provisions for refrigerated temporary storage of dialyzers, a decontamination and cleaning area, sinks processors, computer processors and label printers, a packaging area, and dialyzer storage cabinets.

(12) If a nourishment station for dialysis service is provided, the nourishment station must contain a sink, a work counter, a refrigerator, storage cabinets, and equipment for serving nourishments as required.

(13) Each ESRD facility must have an environmental services closet immediately available to the treatment area. The closet must contain a floor receptor or service sink and storage space for housekeeping supplies and equipment.

(14) If an equipment maintenance service area is provided, the service area must contain hand washing facilities, a work counter and a storage cabinet.

(15) Each ESRD facility must provide a supply area or supply carts.

(16) Storage space out of the direct line of traffic shall be available for wheelchairs and stretchers, if stretchers are provided.

(17) Each ESRD facility must provide a clean linen storage area commensurate with the needs of the facility. The storage area may be within the clean work area, a separate closet, or distribution system. If a closed cart distribution system is used for clean linen, the cart must be stored out of the path of normal traffic.

(18) Each ESRD facility using central batch delivery system, must provide, either on premises or through written arrangements, individual delivery systems for the treatment of any patient requiring special dialysis solutions.

(19) Each ESRD facility must house water treatment equipment in an enclosed room at a sufficient distance from the patient treatment area to prevent machinery and operational noise from disturbing patients.

(20) Each ESRD facility must provide a patient toilet with hand washing facilities immediately adjacent to the treatment area.

(21) Each ESRD facility must provide lockers, toilets and hand washing facilities for staff.

(22) Each ESRD facility must provide a secure storage area for patients' belongings.

(23) A waiting area with seating accommodations shall be available or accessible to the dialysis unit. A toilet room with hand washing facilities, a drinking fountain, and a telephone for public use shall be available or accessible for use by persons using the waiting room.

(24) Office and clinical work space shall be available for administrative services.

(25) All finishes shall be tight fitting, easily maintained and cleanable, resistant to cleaning chemicals, and detailed to minimize the potential for microbial growth.

(26) The reprocessing room, water treatment room, supply rooms, clean and soiled work rooms, soiled holding rooms shall be lockable and restricted to authorized personnel only.

(27) The reprocessing room, soiled work, holding room, and environmental services closet shall have continuous exhaust ventilation at the rate of not less than 10 air changes per hour and sufficient to generate inward air flow.

(28) Patient and public toilet rooms and exam rooms shall be equipped with an emergency call system. The call system shall require only momentary contact to activate, shall identify the source of the call and shall be cancelable only at the source of the call. The call system in toilet rooms shall be accessible to a collapsed patient lying on the floor. Inclusion of a pull cord will satisfy this requirement.

and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities

March 28, 2012

Notice of Continuation September 15, 2016

26-21-5

26-21-16

R432-650-15. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6

R432. Health, Family Health and Preparedness, Licensing.**R432-700. Home Health Agency Rule.****R432-700-1. Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-700-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation of home health agencies.

R432-700-3. Compliance.

All home health agencies shall comply with these rules and their own policies and procedures.

R432-700-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Branch Office" means a location from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is a part of the parent home health agency and shares administration and services.

(b) "Parent Home Health Agency" means the agency that has administrative control of branch offices.

(c) "Service Agreement" means a written agreement for services between the client and the personal care provider which outlines how the services are to be provided according to the requirements of R432-700-30.

R432-700-5. Categories of Home Health Agencies.

Home health agencies include institutionally based home care programs, freestanding public and proprietary home health agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide intermittent part-time services or full-time private duty services to patients in their place of residences.

R432-700-6. Services Provided by a Home Health Agency.

(1) A home health agency shall provide services to patients in their place of residence, or in special circumstances, the place of employment.

(2) Services shall be directed and supervised by a licensed practitioner. These services may help avoid premature or inappropriate institutionalization.

(3) Professional and supportive personnel shall be responsible to the agency for any of the following services which they may perform:

(a) Provision of skilled services authorized by a physician;

(b) Nursing services assessed, provided, or supervised by registered nurses;

(c) Other related health services approved by a licensed practitioner.

R432-700-7. Licensure Required.

(1) These provisions do not apply to a single individual providing professional services under the authority granted by his professional license or registration.

(2) See R432-2.

R432-700-8. Governing Body and Policies.

(1) The home health agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the agency.

(2) The administrative structure of the agency must be shown by an organization chart.

(3) The governing body shall assume responsibility to:

(a) Comply with all federal regulations, state rules, and local laws;

(b) Adopt policies and procedures which describe functions or services of the home health agency and protect patient rights;

(c) Adopt a statement that there is no discrimination because of race, color, sex, religion, ancestry, or national origin (Sections 13-7-1 through 4);

(d) Develop and implement bylaws which shall include at least:

(i) A statement of purpose;

(ii) A statement of qualifications for membership and methods to select members of the governing board;

(iii) A provision for the establishment, selection, and term of office for committee members and officers;

(iv) A description of functions and duties of the governing body, officers, and committees;

(v) A statement of the authority and responsibility delegated to the administrator;

(vi) A policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;

(vii) Meet as stated in bylaws, at least annually;

(viii) Appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.

(4) Notify the licensing agency the name of a new administrator in writing no later than five days after hire.

(5) Review the written annual evaluation report from the administrator and make recommendations as necessary. Documentation of this review shall be available to the Department.

(6) Make provision for resources and equipment to provide a safe working environment for personnel.

(7) Establish a system of financial management and accountability.

R432-700-9. Administrator.

(1) The administrator designated by the governing body shall be responsible for the overall management of the agency.

(2) The administrator shall have at least one year of managerial or supervisory experience.

(3) The administrator shall designate in writing a qualified person who shall act in his absence. The designated person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

(4) The administrator or designee shall be available during the agency's hours of operation.

(5) Responsibilities.

The administrator shall have the responsibility to:

(a) Complete, submit, and file all records and reports required by the Department;

(b) Review agency policies and procedures at least annually and revise as necessary and document the date of review;

(c) Implement agency policies and procedures;

(d) Organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;

(e) Appoint a physician or registered nurse, or health care professional to provide general supervision, coordination, and direction for professional services of the agency;

(f) Appoint a registered nurse to be the director of nursing services;

(g) Appoint the members and their terms of membership in the interdisciplinary quality assurance committee;

(h) Appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;

(i) Designate a person responsible for maintaining a

clinical record system on all patients;

(j) Maintain current written designations or letters of appointment in the agency;

(k) Employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(l) Develop job descriptions that delineate functional responsibilities and authority;

(m) Develop a staff communication system that coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(n) Provide staff orientation as well as continuing education (staff development) in applicable policies, rules, regulations, and resource materials;

(o) Secure contracts for services not directly provided by the home health agency;

(p) Implement a program of budgeting and accounting;

(q) Establish a billing system which itemizes services provided and charges submitted to the payment source.

R432-700-10. Personnel.

(1) The administrator shall employ qualified personnel who are competent to perform their respective duties, services, and functions.

(2) The agency shall develop written policies and procedures that address at least the following:

(a) Job descriptions, qualifications, validation of licensure or certificates of completion for each position held;

(b) Orientation for direct and contract employees;

(c) Criteria for, and frequency of, performance evaluations;

(d) Work schedules; method and period of payment; fringe benefits such as sick leave, vacation, insurance, etc.;

(e) Frequency and documentation of in-service training;

(f) Contents of personnel files.

(3) Each employee shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(4) Failure to ensure that all staff are licensed, certified or registered may result in sanctions to the agency license.

(5) Copies shall be maintained for Department review that all staff have a current license, certificate, or registration. New employees shall have 45 days to present the original document.

(6) An annual in-service shall be documented that staff have been trained in the reporting requirements for suspected abuse, neglect and exploitation.

R432-700-11. Health Surveillance.

(1) The agency shall establish and implement a policy and procedure for health screening of all agency health care workers (persons with direct patient contact) to identify any situation which would prevent the employee from performing assigned duties in a satisfactory manner.

(2) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Communicable Disease Rules.

(3) 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 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.

(4) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-700-12. Orientation.

(1) There shall be documentation that all employees are oriented to the agency and the job for which they are hired.

(2) Orientation shall include but is not limited to:

(a) The functions of agency employees and the relationships between various positions or services;

(b) Job descriptions;

(c) Duties for which persons are trained, hold a registration, certificate, or are licensed;

(d) Ethics, confidentiality, and patients' rights;

(e) Information about other community agencies including emergency medical services;

(f) Opportunities for continuing education appropriate to the patient population served;

(g) Reporting requirements for suspected abuse, neglect or exploitation.

R432-700-13. Contracts.

(1) The administrator shall secure written contract or agreement from other providers, or independent contractors, who provide patient services through the home health agency and shall arrange for an orientation to ensure that the contractor is prepared to meet the job expectations.

(2) The contract shall be available for review by the Department.

(3) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) A copy of the professional license must be available, upon Department request.

R432-700-14. Acceptance Criteria.

(1) The agency shall develop written acceptance criteria and shall make these policies available to the public upon request.

(2) Patients shall be accepted for treatment if the patient's needs can be met by the agency in the patient's place of residence. The agency shall base the acceptance determination on an assessment using the following criteria:

(a) The patient needs skilled nursing services, to determine whether a service is skilled, the following criteria shall apply:

(i) the complexity of prescribed services can be safely or effectively performed only by, or under the close supervision of, technical or professional personnel.

(ii) care is needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities of a patient, such as one with terminal cancer.

(iii) special medical complications necessitate service performance or close supervision by technical or professional persons, as in the care of a diabetic patient with impaired circulation, fragile skin, and a fractured leg in a cast.

(b) The patient needs therapy services or support services;

(c) The patient and family request care at home;

(d) The physical facilities in the patient's place of residence can be adapted to provide safe environment for care.

R432-700-15. Termination of Services Policies.

(1) The agency may discharge a patient under any of the following circumstances:

(a) A licensed practitioner signs a discharge statement for termination of services;

(b) Treatment objectives are met;

(c) The patient's status changes, which makes treatment objectives unattainable, and new treatment objectives are not an alternative;

(d) The family situation changes and affects the delivery of services;

(e) The patient or family is uncooperative in efforts to attain treatment objectives;

(f) The patient moves from the geographic area served by the agency;

(g) The physician fails to renew orders as required by the rules for skilled nursing or therapy services, or, the patient changes physician's and the agency cannot obtain orders for continuation of services from the new physician;

(h) The patient's payment sources are exhausted and the agency is fiscally unable to provide free or part-cost care;

(i) The agency discontinues a particular service or terminates all services;

(j) The agency can no longer provide quality care in the place for residence;

(k) The patient or family requests agency services to be discontinued;

(l) The patient dies;

(m) the patient or family is unable or unwilling to provide an environment that ensures safety for the both the patient and provider of service; or

(n) The patient's payor excludes the agency from participating as a covered provider or refuses to authorize services the agency determines are medically necessary.

(2) The person who is assigned to supervise and coordinate care for a particular patient must complete a discharge summary when services to the patient are terminated.

R432-700-16. Patients' Rights.

(1) Written patients' rights shall be established and made available to the patient, guardian, next of kin, sponsoring agency, representative payee, and the public.

(2) Agency policy may determine how patients' rights information is distributed.

(3) The agency shall insure that each patient receiving care has the following rights:

(a) To be fully informed of these rights and all rules governing patient conduct, as evidenced by documentation in the clinical record;

(b) To be fully informed of services and related charges for which the patient or a private insurer may be responsible, and to be informed of all changes in charges;

(c) To be fully informed of the patient's health condition, unless medically contraindicated and documented in the clinical record;

(d) To be afforded the opportunity to participate in the planning of home health services, including referral to health care institutions or other agencies, and to refuse to participate in experimental research;

(e) To refuse treatment to the extent permitted by law and to be informed of the medical consequences if treatment is refused;

(f) To be assured confidential treatment of personal and medical records, and to approve or refuse their release to any individual outside the agency, except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

(g) To be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(h) To be assured the patient and the family or significant others will be taught about required services, so the patient can develop or regain self-care skills and the family or others can understand and help the patient;

(i) To be assured that personnel who provide care demonstrate competency through education and experience to carry out the services for which they are responsible;

(j) To receive proper identification from the individual

providing home health services;

(k) To receive information concerning the procedures to follow to voice complaints about services being performed.

R432-700-17. Physician's Orders.

(1) Physician's orders shall be incorporated into the plan of care when skilled care is being provided.

(2) Physician's orders may include:

(a) Diet and nutritional requirements;

(b) Medications;

(c) Frequency and type of service;

(d) Treatments;

(e) Medical equipment and supplies;

(f) Prognosis.

R432-700-18. Patient Records.

(1) The agency shall develop and implement record keeping policies and procedures that address use of patient records by authorized staff, content, confidentiality, retention, and storage.

(2) Records shall be maintained in an organized format.

(3) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.

(4) An accurate, up-to-date record must be maintained for every patient receiving service through the home health agency.

(5) Each person who has patient contact or provides a service in the patient's place of residence must enter a clinical note of that contact or service in the patient's record.

(6) All entries shall be dated and authenticated with the signature, or identifiable initials of the person making the entry.

(7) Services provided by the agency and outcomes of these services must be documented in the individual patient record.

(8) Each patient's record shall contain at least the following information:

(a) Identification data including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(b) A written plan of care;

(c) A signed and dated patient assessment which identifies pertinent information required to carry out the plan of care;

(d) Reasons for referral to home health agency;

(e) Statement of the suitability of the patient's place of residence for the provision of health care services;

(f) Documentation of telephone consultation or case conferences with other individuals providing services;

(g) Signed and dated clinical notes for each patient contact or home visit including services provided

(h) A written Termination of Services summary which describes:

(i) The care or services provided;

(ii) The course of care and services;

(iii) The reason for discharge;

(iv) The status of the patient at time of discharge;

(v) The name of the agency or facility if the patient was referred or transferred.

(9) For those patients who receive skilled services the following items shall be included in the patient record in addition to R432-700-18(8):

(a) Diagnosis;

(b) Pertinent medical and surgical history;

(c) A list of medications and treatments;

(d) Allergies or reactions to drugs or other substances;

(e) Clinical notes to include a description of the patient condition and significant changes such as:

(i) Objective signs of illness, disorders, body malfunction;

- (ii) Subjective information from the patient and family;
 - (iii) General physical condition;
 - (iv) General emotional condition;
 - (v) Positive or negative physical and emotional responses to treatments and services;
 - (vi) General behavior; and
 - (vii) General appearance.
- (f) Clinical summaries or other documents obtained when necessary for promoting continuity of care, especially when a patient receives care elsewhere, such as a hospital, ambulatory surgical center, nursing home, physician or consultant's office or other home health agency.

R432-700-19. Confidentiality and Release of Information.

- (1) The agency must develop and implement policies and procedures to safeguard patient records against loss, destruction, or unauthorized use.
- (2) There shall be written procedures for the use and removal of medical records. The release of information, including photographs, shall require the written consent of the patient.
- (3) Patient records shall be confidential. Information may be disclosed only to authorized persons in accordance with federal regulations, state rules, and local laws.
- (4) Authorized representatives of the Department shall be allowed to review records to determine compliance with licensure rules and standards.
- (5) When a patient is referred to another agency or facility, the home health agency may release information only with the written consent of the patient.
- (6) Provision shall be made for filing, safe storage, and easy accessibility of medical records.

R432-700-20. Quality Assurance.

- (1) The quality, appropriateness, and scope of services rendered shall be reviewed and evaluated at least annually by the governing body to determine overall effectiveness in meeting agency objectives.
- (2) The administrator shall conduct an annual evaluation of the agency's overall program and submit a written report of the findings to the governing body.
- (3) The agency shall demonstrate concern for cost of care by evaluation of the following:
- (a) Relevance of health care services;
 - (b) Appropriateness of treatment frequency;
 - (c) Use of less expensive, but still effective, resources whenever possible;
 - (d) Use of ancillary services consistent with patient needs.
- (4) An interdisciplinary quality assurance committee shall evaluate patient services on at least a quarterly basis. A written report of findings from each meeting shall be submitted to the administrator and shall be available in the agency.
- (a) Each member of the quality assurance committee shall be appointed by the administrator for a given term of membership.
- (b) The quality assurance committee shall have a minimum of three members who represent at least three different licensed or certified health care professions.
- (5) The methodology for evaluation shall include but is not limited to:
- (a) Review and evaluation of active and closed patient records to assure that established policies and procedures are being followed. Agency policy and procedure will determine the methods for selecting and reviewing a representative sample of records. Examples of methods of selection could either be a given percentage for both active and closed records, or a given number of records for each category of service provided during the review period;
 - (b) Review and evaluation of coordination of services

through documentation of written reports, telephone consultation, or case conferences;

- (c) Review and evaluation of plans of treatment for content, frequency of updates, and whether clinical notes correspond to goals written in the plan of care.

R432-700-21. Nursing Services.

- (1) Nursing services provided through a home health agency shall be under the supervision of a director of nursing services.
- (2) Nursing services shall be provided by or under the supervision of a registered nurse and according to the plan of care.
- (3) When an agency provides or contracts for services, the service shall be provided according to the plan of care and supervised by designated, qualified personnel.
- (4) Nursing staff shall observe, report, and record written clinical notes.
- (5) Nursing services should recognize and use opportunities to teach health concepts to the patient and family.
- (6) All registered nurses or licensed practical nurses employed by, or on contract with, the agency shall have a valid license from the Utah Department of Commerce, Title 58, Chapter 31b.
- (7) Licensed nurses shall have the following responsibilities:
- (a) Administer prescribed medications and treatments according to law and as permitted within the scope of the individual's license;
 - (b) Perform nursing care according to the needs of the patient and as indicated in the written plan of care;
 - (c) Inform the physician and other personnel of changes in the patient's condition and needs;
 - (d) Write clinical notes in the individual patient record for each visit or contact;
 - (e) Teach self-care techniques to the patient or family, or both;
 - (f) Develop plans of care;
 - (g) Participate in in-service programs.
- (8) The director of nursing services shall be responsible for and shall be accountable for the following functions:
- (a) Designate a registered nurse to act as director of nursing services during his absence;
 - (b) Assume responsibility for the quality of nursing services provided by the agency;
 - (c) Develop nursing service policies and procedures that must be reviewed annually and revised as necessary;
 - (d) Establish work schedules for nursing personnel according to patient needs;
 - (e) Assist in development of job descriptions for nursing personnel;
 - (f) Complete performance evaluations for nursing personnel according to agency policy;
 - (g) Direct in-service programs for all nursing personnel.
- (9) In addition to the general responsibilities, a registered nurse shall have the following responsibilities:
- (a) Make the initial nursing evaluation visit;
 - (b) Re-evaluate nursing needs based on the patient's status and condition;
 - (c) Initiate the plan of care and make necessary revisions;
 - (d) Provide services which require specialized nursing skill;
 - (e) Initiate appropriate preventive and rehabilitative nursing procedures;
 - (f) Supervise staff assignments based on specific patient needs, family capabilities, staff training and experience, and degree of supervision needed;
 - (g) Assist in coordinating all services provided;
 - (h) Prepare termination of services statements;

(i) Supervise and consult with licensed practical nurses as necessary;

(j) Provide written instructions for certified nursing aide to ensure provision of required services written in the plan of care;

(k) Supervise certified nursing aide in the patient's home as necessary, and be readily available for consultation by telephone;

(l) Make supervisory visits with or without the certified nursing aide's presence as follows:

(i) Initial assessment;

(ii) Every two weeks to patients who receive skilled services;

(iii) Every three months to patients who require long-term maintenance services;

(iv) Any time there is a question of change in the patient's condition.

(10) The licensed practical nurse shall have the following responsibilities:

(a) Work under the supervision of a registered nurse;

(b) Observe, record, and report to the immediate supervisor the general physical or mental condition of the patient;

(c) Assist the registered nurse in performing specialized procedures;

(d) Assist in development of the plan of care.

R432-700-22. Certified Nursing Aide.

The certified nursing aide shall have the following responsibilities:

(1) Provide only those services written in the plan of care and received as written instructions from the registered nurse supervisor. If the service is an extension of therapy, the instructions shall be written by the licensed therapist;

(2) Perform normal household services essential to health care at home;

(3) Make occupied or unoccupied beds;

(4) The certified nursing aide may supervise the patient's self-administration of medication by:

(a) Reminding the patient it is time to take medications;

(b) Opening the bottle cap;

(c) Reading the medication label to patients;

(d) Checking the self-administered dosage against the label of the container;

(e) Reassuring the patient that he is taking the correct dose;

(f) Observing the patient taking his medication.

(5) Perform simple diagnostic activities;

(6) Perform activities of daily living as written in plan of care;

(7) Give nail care as described in the plan of care;

(8) Observe and record food and fluid intake when ordered;

(9) Change dry dressings according to written instructions from the supervisor;

(10) Administer emergency first aid;

(11) Provide escort and transportation to doctor's appointments and elsewhere as part of patient-care services;

(12) Provide social interaction and reassurance to the patient and family in accordance with the plan of care;

(13) Write clinical notes in individual patient records.

(14) Certified Nursing Aides shall be at least 18 years old.

(15) Certified Nursing Aides shall have received a certificate of completion for the employment position:

(a) The curriculum or the comparable challenge exam shall be offered under the direction of the Utah Board of Education;

(b) If the employee does not have a certificate of completion for the position at the time of employment, completion of the course of study or challenge exam shall occur

within six months of the date of hire.

R432-700-23. Personal Care Aides.

(1) Personal care aides shall be at least 18 years of age and have the following responsibilities:

(a) Receive written instructions from the supervisor;

(b) Perform only the tasks and duties outlined in the service agreement;

(c) Have knowledge of agency policy and procedures;

(d) Be trained in first aid;

(e) Be oriented and trained in all aspects of care to be provided to clients;

(f) Be able to demonstrate competency in all areas of training for personal care; and

(g) Maintain a minimum of six hours of in-service per calendar year, prorated for the first year of employment;

(2) Personal Care Aides may assist clients with the following activities:

(a) Self-administration of medications by:

(i) reminding the client to take medications, and

(ii) opening containers for the client;

(b) Housekeeping;

(c) Personal grooming and dressing;

(d) Eating and meal preparation;

(e) Oral hygiene and denture care;

(f) Toileting and toilet hygiene;

(g) Arranging for medical and dental care including transportation to and from the appointment;

(h) taking and recording oral temperatures;

(i) Administering emergency first aid;

(j) Providing or arranging for social interaction;

(k) Providing transportation.

(3) Personal Care Aides shall document observations and services in the individual client record.

R432-700-24. Plan of Care.

(1) A plan of care shall be established and documented in the patient's record to describe any direct or contract services, care, or treatment provided by the home health agency.

(2) A plan of care shall be developed and signed by a licensed health care professional.

(3) The plan of care shall be developed with consultation, as needed, from other agency staff or contract personnel.

(4) Modifications or additions to the initial plan of care shall be made as necessary.

(5) Each plan of care shall be reviewed and approved by the licensed health care professional as the patient's condition warrants, at intervals not to exceed 63 days.

(6) For patients receiving skilled services, the written plan of care shall be approved by a physician at intervals not to exceed 63 days.

(7) The person who is assigned to supervise and coordinate care for a patient shall have the primary responsibility to notify the attending physician and other agency staff of any significant changes in the patient's status.

(8) All care plans and notifications shall be made part of the patient's record.

(9) The plan of care, usually developed in accordance with the referring physician's orders, shall include:

(a) Name of the patient;

(b) Diagnoses (required for patients receiving skilled services);

(c) Treatment goals stated in measurable terms;

(d) Services to be provided, at what intervals, and by whom;

(e) Needed medical equipment and supplies;

(f) Medications to be administered by designated, licensed agency personnel;

(g) Supervision of self-administered medication;

- (h) Diet or nutritional requirements;
- (i) Necessary safety measures;
- (j) Instructions, if any, to patient and/or family;
- (k) Date plan was initiated and dates of subsequent review.

R432-700-25. Medication and Treatment.

(1) Medications or skilled treatments shall be administered only by licensed personnel to comply with signed orders from a person lawfully authorized to give the order. This order may be given over the telephone but shall be subsequently signed by the person giving the order within 31 days.

(2) All telephone orders shall be received and verified only by licensed personnel lawfully authorized to accept the order. Telephone orders shall be recorded in the patient's record.

(3) If medications are administered by agency personnel, the orders and subsequent changes in orders, shall be signed by the physician and included in the patient's record.

(4) Orders for therapy services shall include the procedures to be used, the frequency of therapy, and the duration of therapy.

(5) Orders for skilled services shall be reviewed or renewed by the attending physician at intervals not to exceed 63 days. Physician's signature and date shall be evidence of this review or renewal.

(6) Physician orders may be transmitted by facsimile machine. The agency must be able to obtain the original signature, upon request, if verification of the signature is requested.

R432-700-26. Therapy Services.

(1) Physical, occupational, speech, and nutrition therapy services offered by the agency, as either direct or contract services, shall be provided by, or under the supervision of, a licensed or certified therapist in accordance with the plan of care under Title 58.

(2) The qualified therapist shall have the following general responsibilities:

- (a) Provide treatment as ordered and approved by the attending physician;
- (b) Evaluate the home environment and make recommendations;
- (c) Develop the plan of care for therapy;
- (d) Observe and report findings about the patient's condition to the attending physician and other agency staff, and document information in the patient's record;
- (e) Advise, consult, and instruct when necessary, other agency personnel and family about the patient's therapy program;
- (f) Provide written instructions for the certified nursing aide to promote extension of therapy services;
- (g) Supervise other agency personnel when appropriate;
- (h) Participate in in-service programs.

(3) In addition to the general responsibilities, a physical, speech or occupational therapist may perform the following:

- (a) Provide written instructions for personal care aides and certified nursing aides to ensure provision of required services written in the plan of care;
- (b) Supervise aides in the patient's home as necessary, and be readily available for consultation by phone;
- (c) Make supervisory visits with or without the aide's presence, as required.

R432-700-27. Medical Supplies and Equipment.

The agency shall develop and follow written policies and procedures which describe:

- (1) Agency provision of or use of durable medical equipment, and disposable and semi-disposable medical supplies;
- (2) Categories of medical supplies and equipment available through the home health agency;

(3) Charges and reimbursement for medical supplies and equipment;

(4) Processes for billing medical supplies and equipment to the patient, insurance carrier, or other payment source.

R432-700-28. Emergency and After-Hours Care.

Emergency and after-hours care shall be described in written policies and procedures and made available to the patient and family.

R432-700-29. Social Services.

(1) When medical social services are provided, they shall be provided by a certified social worker (CSW) or by a social service worker (SSW) supervised by a certified social worker, in accordance with the plan of care.

(2) The social worker shall be responsible to:

- (a) Assist team members in understanding significant social and emotional factors related to health problems;
- (b) Participate in the development of the plan of care;
- (c) Prepare clinical notes according to rules and agency policy;
- (d) Utilize community resources;
- (e) Participate in in-service programs.

R432-700-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities**October 1, 2011****Notice of Continuation September 15, 2016****26-21-5****26-21-2.1**

R432. Health, Family Health and Preparedness, Licensing.**R432-725. Personal Care Agency Rule.****R432-725-1. Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-725-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation of personal care agencies.

R432-725-3. Compliance.

(1) A Personal Care Agency shall not exceed personal care services as defined in R432-725-4(2)(c).

(2) A Transportation Services Agency does not require a Personal Care Agency license.

R432-725-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(b) A "Personal Care Agency" consists of two or more individuals providing personal care services on a visiting basis.

(c) "Personal Care Services" means:

(i) self-administration of medications with the assistance of a Personal Care Aide which may include:

(A) Reminding the client to take medications, and

(B) Opening containers for the client;

(ii) medication set up by a Registered Nurse, which shall include:

(A) completing a functional assessment;

(B) reviewing all medication orders; and

(C) placing medication in mediset containers.

(iii) transferring;

(iv) personal grooming and dressing;

(v) eating and meal preparation;

(vi) oral hygiene and denture care;

(vii) toileting and toilet hygiene;

(viii) bathing;

(ix) taking and recording temperatures and weights;

(x) administering emergency first aid;

(xi) providing transportation.

(d) "Service Agreement" means a written agreement for services between the client and the personal care provider which outlines how the services are to be provided.

(e) "Transportation Services Agency" means an agency that provides transportation and does not provide any Personal Care Services.

R432-725-5. Administrator.

(1) The licensee shall appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.

(2) The administrator shall be at least 21 years of age and have at least one year of managerial or supervisory experience.

(3) The administrator shall designate in writing a qualified person who is at least 21 years of age and who shall act in his absence. The designee shall have sufficient power, authority, and freedom to act in the best interests of the client safety and well being.

(4) The administrator or designee shall be available during the agency's hours of operation.

R432-725-6. Personnel.

(1) The agency shall maintain documentation for each

employee required to be licensed or certified.

(2) Copies shall be maintained for Department review that staff have a current license, certificate, or registration. New employees shall have 45 days to present the original document.

(3) The agency shall ensure each employee maintains a minimum of six hours of in-service per calendar year, prorated for the first year of employment.

(4) An annual in-service shall be documented that staff have been trained in the reporting requirements for suspected abuse, neglect and exploitation.

R432-725-7. Health Surveillance.

(1) The agency shall establish and implement a policy and procedure for health screening of all agency health care workers (persons with direct client contact) to identify any situation which would prevent the employee from performing assigned duties in a satisfactory manner.

(2) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Communicable Disease Rules.

(3) 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.

(4) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-725-8. Orientation.

(1) There shall be documentation that all employees are oriented to the agency and the job for which they are hired.

(2) Orientation shall include but is not limited to:

(a) Job descriptions/duties;

(b) Ethics, confidentiality, and clients' rights;

(c) Reporting requirements for suspected abuse, neglect or exploitation.

R432-725-9. Admission and Retention.

(1) The agency may accept and retain clients for service if the client's needs do not exceed the level of personal care services as determined and documented by a licensed health care professional.

(2) If the client's needs exceed the personal care services, the agency shall make a referral to a licensed health care professional or an appropriate alternative service.

R432-725-10. Service Agreement.

(1) The agency shall obtain a signed and dated service agreement from the client and/or his responsible party. The service agreement shall include the following:

(a) A description of services to be performed by the Personal Care Aide;

(b) Charges for the services;

(c) A statement that a 30-day notice shall be given prior to a change in base charges.

R432-725-11. Termination of Services Policies.

(1) The agency may discharge a client under any of the following circumstances:

(a) Payment for services cannot be met;

(b) The safety of the client or provider cannot be assured;

- (c) The needs of the client exceed the level of care provided by the agency;
- (d) The client requests termination of services; or
- (e) The agency discontinues services.

R432-725-12. Clients' Rights.

- (1) Written clients' rights shall be established and made available to the client, guardian, next of kin, sponsoring agency, representative payee, and the public.
- (2) Agency policy may determine how clients' rights information is distributed.
- (3) The agency shall insure that each client receiving services has the following rights:
 - (a) To be fully informed of these rights and all rules governing client conduct, as evidenced by documentation in the clinical record;
 - (b) To be fully informed of services and related charges for which the client or a private insurer may be responsible, and to be informed of all changes in charges;
 - (c) To be free of mental abuse, physical abuse and/or exploitation;
 - (d) To be afforded the opportunity to participate in the planning of personal care services, including referral to health care institutions or other agencies, and to refuse to participate in experimental research;
 - (e) To be assured confidential treatment of personal records, and to approve or refuse their release to any individual outside the agency, except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;
 - (f) To be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;
 - (g) To be assured that personnel who provide care demonstrate competency through education and experience to carry out the services for which they are responsible;
 - (h) To receive proper identification from the individual providing personal care services;
 - (i) To receive information concerning the procedures to follow to voice complaints about services being performed.

R432-725-13. Personal Care Agency Records.

- (1) The Personal Care Agency shall maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.
- (2) Records shall be protected against access by unauthorized individuals.
- (3) The Personal Care Agency shall maintain a separate record for each Client which shall be retained by the agency for three years following the last date of service.
- (4) The Client record shall contain the following:
 - (a) Client's name, date of birth and address;
 - (b) Client service agreement;
 - (c) Name, address, and telephone number of the individual to be notified in case of accident, emergency or death;
 - (d) Documentation of date and reason for the termination of services.
- (5) The Personal Care Agency shall maintain personnel records for each employee and shall retain such records for at least three years following termination of employment. Personnel records must include the following:
 - (a) employee application;
 - (b) date of employment;
 - (c) termination date;
 - (d) reason for leaving;
 - (e) documentation of first aid training;
 - (f) health inventory;
 - (g) TB skin test documentation; and
 - (h) documentation of criminal background screening

authorization.

R432-725-14. Personal Care Aides.

- (1) Personal care aides shall be at least 18 years of age and must:
 - (a) Have knowledge of agency policy and procedures;
 - (b) Be trained in first aid;
 - (c) Be able to demonstrate competency in all areas of training for personal care.
- (2) Personal Care Aides shall be supervised by an individual with the following qualifications:
 - (a) A licensed nurse; or
 - (b) A Certified Nursing Aide with at least two years experience in personal or home care.
- (3) The supervisor shall complete an on-site evaluation of the personal care aide and document the quality of the personal care services provided in the client's place of residence every six months.
- (4) Personal Care Aides shall document observations and services in the individual client record.

R432-725-15. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities**June 2, 2015****Notice of Continuation September 15, 2016****26-21**

R432. Health, Family Health and Preparedness, Licensing.**R432-750. Hospice Rule.****R432-750-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-750-2. Purpose.

A hospice program provides support and care for persons with a limited life expectancy so that they might live as fully and comfortably as possible.

(1) A hospice program recognizes dying as a normal process resulting from disease or injury.

(2) A hospice service neither hastens nor postpones death.

(3) A hospice program exists in the hope and belief that, through appropriate care and the promotion of a caring community sensitive to their needs, patients and families may be free to attain a degree of mental and spiritual preparation for death that is satisfactory to them.

(4) The hospice program is a health care agency or facility which offers palliative and supportive services providing physical, psychosocial, spiritual and bereavement care for dying persons and their families.

(5) A hospice provides services through an interdisciplinary team of professionals and volunteers.

(6) Hospice services are available in both the home and an inpatient setting.

R432-750-3. Time for Compliance.

All hospice agencies shall be licensed and in full compliance with these rules by March 1, 1998.

R432-750-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Appropriate" means especially suitable or compatible; fitting.

(b) "Bereavement" means the period of time, usually occurring within the first year after the loss, during which a person or group of people experiences, responds emotionally to, and adjusts to the loss by death of another person.

(c) "Care" means to perceive and respond to the needs of another.

(d) "Continuum" means the uninterrupted provision of services appropriate to the needs of the patient and family; these services are planned, coordinated, and made available by the hospice program.

(e) "Family" means a group of individuals living under one roof and under one head; a group of persons of common ancestry; a group of individuals having a personal commitment one to the another.

(f) "Grief" means the response to loss that often occurs in stages of varying length. Stages are differentiated by changes in feeling, thought, and behavior.

(g) "Hospice" means a public agency or private organization or subdivision of either of these that is primarily engaged in providing care to terminally ill individuals and their families.

(h) "Hospice Administrator" means a person who is appointed in writing by the governing body of the hospice organization and who shall be accountable and responsible for implementing the policies and programs approved by the governing body.

(i) "Hospice Care" means the care given to the terminally ill and their families which occurs in a home or in a health facility and which includes medical, palliative, psychosocial, spiritual, bereavement and supportive care and treatment.

(j) "Hospice Inpatient Facility" means a freestanding licensed hospice facility or designated hospice licensed hospice unit in an existing health care facility.

(k) "Interdisciplinary Team" means a team composed of

physician (attending and medical director), nurse, social worker, pastoral care provider, volunteer, patient and family, and any other professionals as indicated.

(l) "Palliative Treatment" means treatment and comfort measures directed toward relief of symptoms and pain management rather than treatment to cure.

(m) "Palliative Care" means the care given to the terminally ill, focusing on relief of distressing symptoms

(n) "Pastoral Care Provider" means an individual who has received a degree from an accredited theological school, or an individual who by ordination or by ecclesiastical endorsement from the individual's denomination has been approved to function in a pastoral capacity. A Pastoral Care Provider may also be an individual who has received certification in Clinical Pastoral Education which meets the requirements for the College of Chaplains. The individual shall have experience in pastoral duties and be capable of providing for hospice patients' and families' spiritual needs.

(o) "Primary Care Giver" means the family member or other person designated by the family who assumes the overall responsibility for the care of the patient in the home.

(p) "Special Services" means those services not represented on the interdisciplinary team that may be valuable for specific patient and family needs, including but not limited to nurses, social workers, homemakers, certified nursing aide, recreation therapists, occupational therapists, respiratory therapists, pharmacists, dieticians, lawyers, certified public accountants, funeral directors, musical therapists, art therapists, speech therapists, physical therapists, and counselors.

(q) "Spiritual" means patient's and families' beliefs and practices as they relate to the meaning of their life, death, and their connection to humanity which may or may not be of a religious nature.

(r) "Terminal Illness" means a state of disease characterized by a progressive deterioration with impairment of function which without aggressive intervention, survival is anticipated to be six months or less.

(s) "Terminal Care" means the care provided to an individual during the final stage of their illness.

(t) "Unit of Care" means the individual to receive hospice services; since the term "unit" means a single, whole thing, hospice defines the patient and family to be the single whole, regardless of the degree of harmony or integration of the parts within that whole.

(u) "Volunteer" means an individual, professional or nonprofessional, who has received appropriate orientation and training consistent with acceptable standards of hospice philosophy and practice; one who contributes time and talent to the hospice program without economic remuneration.

R432-750-5. Licensure.

Hospice agencies shall include institutionally based hospice programs, freestanding public and proprietary hospice agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide hospice services.

R432-750-6. Eligibility.

These provisions apply to a program advertising or presenting to be a hospice or hospice program of care, as defined in Section 26-21-2, which provides, directly or by contract hospice services to the terminally ill.

R432-750-7. Governing Body and Administration.

(1) The hospice agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the agency.

(2) The administrative structure of the agency must be shown by an organization chart.

(3) The governing body is responsible to:

(a) comply with all federal regulations, state rules, and local laws;

(b) adopt policies and procedures which describe functions or services of the hospice and protect patient rights;

(c) adopt a statement that there will be no discrimination because of race, color, sex, religion, ancestry, or national origin (Sections 13-7-1 through 4);

(d) develop and implement bylaws which shall include at least:

(i) a statement of purpose,

(ii) a statement of qualifications for membership and methods to select members of the governing board,

(iii) a provision for the establishment, selection, and term of office for committee members and officers,

(iv) a description of functions and duties of the governing body officers and committees,

(v) a statement of the authority and responsibility delegated to the hospice administrator, and

(vi) a policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;

(e) meet at least annually, or more frequently as stated in the bylaws;

(f) appoint by name and in writing a qualified hospice administrator who is responsible for the agency's overall functions;

(g) notify the licensing agency in writing 30 days prior to any proposed change in the hospice administrator, identifying the name of the new hospice administrator and the effective date of the change;

(h) review the written annual evaluation report from the hospice administrator and document recommendations as necessary;

(i) make provision for resources and equipment to provide a safe working environment for personnel;

(j) establish a system of financial management and accountability.

(4) The hospice administrator is responsible for the overall management of the agency.

(a) The hospice administrator must designate in writing the name and title of a qualified person who shall act as hospice administrator in the temporary absence of the hospice administrator. This designee shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

(b) The hospice administrator or designee shall be available during the agency's hours of operation.

(c) The hospice administrator is responsible to:

(i) complete, submit, file, and make available all records, reports, and documentation required by the Department;

(ii) review agency policies and procedures at least annually and recommend necessary changes to the governing body;

(iii) implement agency policies and procedures;

(iv) organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;

(v) appoint by name and in writing a physician or registered nurse to provide general supervision, coordination, and direction for professional services of the agency;

(vi) appoint by name and in writing a registered nurse to be the director of nursing services;

(vii) appoint by name and in writing the members and their terms of membership in the interdisciplinary quality assurance committee;

(viii) appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;

(ix) designate by name and in writing a person responsible

for maintaining a clinical record system on all patients;

(x) maintain current written designations or letters of appointment in the agency;

(xi) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(xii) develop a staff communication system that coordinates interdisciplinary team services, coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(xiii) secure contracts for services not directly provided by the hospice;

(xiv) implement a program of budgeting and accounting;

(xv) establish, when appropriate, a billing system which itemizes services provided and charges submitted to the payment source; and

(xvi) conduct an annual evaluation of the agency's overall function and submit a written report of the findings to the governing body.

R432-750-8. Personnel.

The hospice administrator shall maintain qualified personnel who are competent to perform their respective duties, services, and functions.

(1) The agency shall develop and implement written policies and procedures that address the following:

(a) job descriptions, qualifications, and validation of licensure or certificates of completion as appropriate for the position held;

(b) orientation for direct and contract employees, and volunteers;

(c) criteria for, and frequency of, performance evaluations;

(d) work schedules; method and period of payment; fringe benefits such as sick leave, vacation, and insurance;

(e) frequency and documentation of in-service training; and

(f) contents of personnel files of employed and volunteer staff.

(2) Each employee must provide within 45 days of hire proof of registration, certification, or licensure as required by the Utah Department of Commerce.

(3) The agency shall establish and implement a policy and procedure for health screening of all agency personnel.

(a) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(b) The health inventory shall obtain at least the employee's history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily;

(c) Employee health screening and immunizations components of personnel health programs shall be developed in accordance with R386-702 Communicable Disease Rule.

(d) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(4) The hospice must document that all employees, volunteers, and contract personnel are oriented to the agency and the job for which they are hired.

(a) Orientation shall include:

(i) the hospice concept and philosophy of care;

(ii) the functions of agency employees and the relationships between various positions or services;

(iii) job descriptions;

(iv) duties for which persons are trained, hold certificates, or are licensed;

(v) ethics, confidentiality, and patients' rights;

(vi) information about other community agencies including emergency medical services;

(vii) opportunities for continuing education appropriate to the patient population served;

(viii) policies related to volunteer documentation, charting, hours and emergencies; and

(ix) reporting requirements when observing or suspecting abuse, neglect and exploitation pursuant to 62A-3-302.

(b) The hospice shall provide and document in-service training and continuing education for staff at least annually.

(i) Members of the hospice interdisciplinary team shall have access to in-service training and continuing education appropriate to their responsibilities and to the maintenance of skills necessary for the care of the patient and family.

(ii) The training programs shall include the introduction and review of effective physical and psychosocial assessment and symptom management.

(c) The hospice shall train all personnel in appropriate Centers for Disease Control (CDC) infectious disease protocols.

(5) The hospice administrator shall appoint a person to coordinate the activities of the interdisciplinary team. This individual shall:

(a) annually review and make recommendations where appropriate of agency policies covering admissions and discharge, medical supervision, care plans, clinical records and personnel qualifications;

(b) assure that on-going assessments of the patient and family needs and implementation of the interdisciplinary team care plans are accomplished;

(c) schedule adequate quality and quantity of all levels of hospice care; and

(d) assure that the team meets regularly to develop and maintain appropriate plans of care and to determine which staff will be assigned to each case.

(6) The hospice program shall provide access to individual and/or group support for interdisciplinary team members to assist with stress and/or grief management related to providing hospice care.

R432-750-9. Contracts.

(1) The hospice administrator shall secure a legally binding written contract for the provision of arranged patient services.

(2) The contract or agreement shall be available for review by the Department.

(3) The contract shall include:

(a) the effective and expiration dates of the contract;

(b) a description of goods or services provided by the contractor to the agency;

(c) provision for financial terms of the contract, including methods to determine charges, reimbursement, and the responsibility of contract personnel in the billing procedure;

(d) the method of supervision of contract personnel and the manner in which services will be controlled, coordinated, and evaluated by the agency;

(e) a statement that contract personnel shall perform according to agency policies and procedures, and shall conform to standards required by laws, rules, or regulations;

(f) a description of the contractor's role in the development of plans of treatment, and how to keep agency staff informed about the patient's needs or condition;

(g) a provision to terminate the contract; and

(h) a photocopy of the professional license of contract personnel, if applicable.

R432-750-10. Acceptance and Termination.

(1) The agency shall develop written acceptance and termination policies and make these policies available to the public upon request.

(2) The agency shall make available to the public, upon request, information regarding the various services provided by the hospice and the cost of the services.

(3) A patient will be accepted for treatment if there is reasonable expectation that the patient's needs can be met by the agency regardless of ability to pay for the services. The agency shall base the acceptance determination on the following:

(a) The patient, family or responsible person agrees that hospice care is appropriate and completes a signed informed consent document requesting hospice services. If no primary care person is available, the agency shall complete an evaluation to determine the patient's eligibility for service.

(b) The patient's attending physician must order hospice care.

(c) The hospice agency determines that the patient's place of residence is adaptable and safe for the provision of hospice services.

(4) The agency may terminate services to a patient if any of the following circumstances occur:

(a) The patient is determined to no longer be terminal.

(b) The family situation changes which affects the delivery of services.

(c) The patient or family is uncooperative in efforts to attain treatment objectives.

(d) The patient moves from the geographic area served by the agency.

(e) The physician fails to renew orders or the patient changes his physician and the agency cannot obtain orders for continuation of services from the new physician.

(f) The agency can no longer provide quality care in the existing environment due to safety of staff, patient, or family.

(g) The patient or family requests that agency services be discontinued.

(5) Upon transfer from a home program to an in-patient unit, or the reverse, the plan of care shall be forwarded to the receiving program.

R432-750-11. Patients' Rights.

(1) The agency shall establish and make available to the patient written patients' rights.

(a) Written patients' rights shall be made available to the, responsible party, next of kin, sponsoring agency, representative payee, and the public upon request.

(b) Agency policy may determine how patients' rights information is distributed.

(2) The agency shall insure that each patient receiving care has the following rights:

(a) to receive information on patient's rights and responsibilities;

(b) to receive information on services for which the patient or a third party payor may be responsible and to receive information on all changes in charges;

(c) to be informed of personal health conditions, unless medically contraindicated and documented in the clinical record, and to be afforded the opportunity to participate in the

planning of the hospice services, including referral to health care institutions or other agencies and to refuse to participate in experimental research;

(d) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such if refused;

(e) to be assured confidential treatment of personal and medical records and to approve or refuse the release of records to any individual outside the agency except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

(f) to be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(g) to receive information about the hospice services required in order to assist in the course of treatment;

(h) to be assured the personnel who provide care are qualified through education and experience to carry out the services for which they are responsible;

(i) to receive proper identification by the individual providing hospice services;

(j) to permit the patient the right to discontinue hospice care at any time he or she chooses; and

(k) to receive information about advanced directives.

R432-750-12. Patient Records.

(1) The administrator shall develop and implement record keeping policies and procedures that address the use of patient records by authorized staff, content, confidentiality, retention, and storage.

(a) Records shall be organized in a uniform medical record format.

(b) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.

(c) The hospice shall maintain an accurate, up-to-date record for every patient receiving service.

(d) Each hospice health care provider who has patient contact or provides a service shall insure that a clinical note entry of that contact or service is made in the patient's record.

(e) All entries must be dated and authenticated with the signature and title of the person making the entry.

(f) The hospice must document services provided and outcomes of these services in the individual patient record.

(2) Physician's orders shall be incorporated into the plan of care and renewed at least every 90 days.

(a) The orders shall include the physician signature and date.

(b) Orders faxed from the physician are acceptable provided that the original order is available upon request.

(3) Each patient's record shall contain at least the following information:

(a) demographic information including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(b) diagnosis;

(c) pertinent medical and surgical history if available;

(d) a written and signed informed consent to receive hospice services;

(e) orders by the attending physician for hospice services;

(f) medications and treatments as applicable;

(g) a written plan of care; and

(h) a signed, dated patient assessment which includes the following:

(i) a description of the patient's functional limitations;

(ii) a physical assessment noting chronic or acute pain and other physical symptoms and their management;

(iii) a psychosocial assessment of the patient and family;

(iv) a spiritual assessment; and

(v) a written summary report of hospice services provided.

(4) The hospice must send a copy of the summary required in subsection 12(3)(g)(v) to the patient's attending physician at least every 90 days. The summary shall become part of the patient's and family record as applicable.

(5) The person who is assigned to supervise or coordinate care for a patient must complete a discharge summary when services to the patient are terminated. The summary shall include:

(a) the reason for discharge; and

(b) the name of the facility or agency if the patient has been referred or transferred.

(6) The hospice shall safeguard clinical record information against loss, destruction, and unauthorized use.

(a) Written procedures shall govern the use and removal of records and conditions for release of patient information.

(b) A written consent is required for the release of patient/client information and photographing of recorded information.

(c) When a patient is transferred to another facility or agency, a copy of the record or abstract must be sent to that service agency.

(7) The agency shall provide an accessible area for filing and safe storage of medical records.

(a) Patient records shall be retained for at least seven years after the last date of patient care.

(b) Upon change of ownership, all patient records shall be transferred to new owners.

R432-750-13. Quality Assurance.

(1) The governing body shall evaluate the quality, appropriateness, and scope of services provided by the agency at least annually to determine if the agency has met the agency objectives.

(2) An interdisciplinary quality assurance committee shall evaluate patient services at least quarterly and maintain a written report of findings. Recommendations from each meeting shall be submitted to the hospice administrator and shall be maintained in the agency for review by the department.

(a) The administrator shall appoint the members of the quality assurance committee for a given term of membership.

(b) The quality assurance committee shall include a minimum of three individuals who represent three different health care services.

R432-750-14. Hospice Services.

(1) A hospice unit of care includes the patient and the patient's family. The patient and family (or other primary care person) participate in the development and implementation of the interdisciplinary care plan according to their ability.

(2) Hospice care includes responding to the scheduled and unscheduled needs of the patient and family 24 hours per day. Written policies and procedures shall include:

(a) a procedure for accepting referrals in accordance with the provisions of R432-750-10;

(b) a procedure for completing an initial assessment and developing the interdisciplinary care plan;

(c) providing for and documenting that the interdisciplinary team meets regularly to evaluate care and includes inpatient and in-home care staff;

(d) provision for the care plan to be available to team members for in-home and inpatient services;

(e) appropriate transfer of care from hospice in-home care to hospice inpatient care and vice-versa where available;

(f) provision for a clearly defined integrated administrative structure between in-home care and inpatient services; and

(g) coordination of care plan between in-home hospice and

inpatient hospice care.

(3) Hospice care shall be provided by the interdisciplinary team.

(a) The interdisciplinary team may include ancillary staff when appropriate.

(b) The interdisciplinary team shall meet at least twice a month to develop and maintain an appropriate plan of care.

(4) A care plan for each patient must be signed by the attending physician and include the following:

(a) the name of patient;

(b) all pertinent diagnoses;

(c) objectives, interventions, and goals of treatment, based upon needs identified in a comprehensive patient assessment;

(d) services to be provided, at what intervals and by whom; and

(e) the date plan was initiated and dates of subsequent reviews.

(5) No medication or treatment requiring an order may be given by hospice nurses except on the order of a person lawfully authorized to give such an order.

(a) Initial orders and subsequent changes in orders for the administration of medications shall be signed by the person lawfully authorized to give such orders and incorporated in the patient's record maintained by the program.

(b) Telephone orders must be received by licensed personnel and recorded immediately in the patient's medical record. Telephone orders must be countersigned by the initiator within 15 days of the date of issue.

(c) Orders for therapy services shall include the specific procedures to be used and the frequency and duration.

(d) The attending physician shall review, sign and date orders at least every 90 days.

(e) Only those hospice employees licensed to do so may administer medications to patients.

(f) Medications and treatments that are administered by hospice employees, must be administered as prescribed and recorded in the patients record.

R432-750-15. Physician Services.

(1) Each patient admitted for hospice services shall be under the care of a licensed physician.

(2) The physician shall provide the following:

(a) approval for hospice care;

(b) admitting diagnosis and prognosis;

(c) current medical findings;

(d) medications and treatment orders; and

(e) pertinent orders regarding the patient's terminal condition.

(3) The administrator shall appoint in writing a licensed physician to be the medical director. The Medical Director must be knowledgeable about the psychosocial and medical aspects of hospice care, on the basis of training, experience and interest. The medical director shall:

(a) act as a medical resource to the interdisciplinary team;

(b) coordinate services with each attending physician to ensure continuity in the services provided in the event the attending physician is unable to retain responsibility for patient care; and

(c) act as liaison with physicians in the community.

R432-750-16. Nursing Services.

(1) A registered nurse shall provide or direct nursing services.

(2) Registered nursing personnel shall perform the following tasks:

(a) make the initial nursing evaluation visit;

(b) re-evaluate the patient's nursing needs as required;

(c) initiate the plan of care and necessary revisions;

(d) provide directly or by contract skilled nursing care;

(e) assign, supervise and teach other nursing personnel and primary care person;

(f) coordinate all services provided with members of the interdisciplinary team;

(g) inform the physician and other personnel of changes in the patient's condition and needs;

(h) prepare clinical progress notes; and

(i) participate in in-service training programs.

R432-750-17. Medical Social Work Services.

(1) The agency shall provide social work services by a qualified social worker who has received a degree from an accredited school of Social Work.

(2) Social work services shall be provided by a social worker licensed under the Mental Health Professional Practice Act (Title 58, Chapter 60).

(3) The social worker shall participate in in-service training to meet the care needs of the patient and family.

R432-750-18. Professional Counseling Services.

(1) The agency shall provide counseling services to patients either directly or by contract. These services may include dietary and other counseling services deemed appropriate to meet the patients' and families' needs.

(2) Individuals who provide counseling services, whether employed or contracted by the agency, must be licensed, certified, registered, or qualified as to education, training, or experience according to law.

R432-750-19. Pastoral Care Services.

(1) The hospice shall provide pastoral services through a qualified staff person who has a working relationship with local clergy or spiritual counselors.

(2) Pastoral services shall include the following:

(a) spiritual counseling consistent with patient and family belief systems;

(b) communication with and support of clergy or spiritual counselors in the community as appropriate; and

(c) consultation and education to patients and families and interdisciplinary team members as requested.

R432-750-20. Volunteer Services.

Hospice volunteers provide a variety of services as defined by the policies of each program and under supervision of a designated and qualified hospice staff member.

(1) Volunteers must receive a minimum of 12 hours of documented orientation and training which shall include the following:

(a) the hospice services, goals, and philosophy of care;

(b) the physiological aspects of terminal disease;

(c) family dynamics, coping mechanisms and psychosocial and spiritual issues surrounding the terminal disease, death and bereavement;

(d) communication skills;

(e) concepts of death and dying;

(f) care and comfort measures;

(g) confidentiality;

(h) patient's and family's rights;

(i) procedures to be followed in an emergency;

(j) procedures to follow at time of patient death;

(k) infection control and safety;

(l) stress management; and

(m) the volunteer's role and documentation requirements.

(3) The hospice shall maintain records of hours of services and activities provided by volunteers.

(4) The agency shall have on file, a copy of certification, registration, or license of any volunteer providing professional services.

R432-750-21. Bereavement Services.

(1) Bereavement services shall address the family needs following the death of the patient. Services are available, as needed, to survivors for at least one year.

(2) Bereavement services shall be supervised by a person possessing at least a degree or documented training in a field that addresses psychosocial needs, counseling, and bereavement services.

(3) All volunteers and staff who deliver bereavement services shall receive bereavement training.

(4) Bereavement services shall include the following:

(a) survivor contact, as needed and documented, following a patient's death;

(b) an interchange of information between the team members regarding bereavement activities; and

(c) a process for the assessment of possible pathological grief reactions and, as appropriate, referral for intervention.

R432-750-22. Other Services.

(1) Other services may include but are not limited to:

(a) physical therapy;

(b) occupational therapy;

(c) speech therapy; and

(d) certified nursing aide.

(2) Services provided directly or through contract shall be ordered by a physician and documented in the clinical record.

R432-750-23. Freestanding Inpatient Facilities.

In addition to the requirements outlined in the previous sections of R432-750, freestanding inpatient hospice facilities shall meet the Construction and Physical Environment requirements of R432-4, R432-5 and R432-12, depending on facility size and type of patient admitted.

R432-750-24. Hospice Inpatient Facilities.

In addition to the requirements outlined in the previous sections of R432-750, inpatient hospice facilities shall meet the requirements of R432-750-25 through R432-750-40.

R432-750-25. Inpatient Staffing Requirements.

(1) The inpatient hospice must provide competent hospice trained nursing staff 24 hours per day, every day of the week to meet the needs of the patient in accordance with the patient's plan of care. Nursing services must provide treatments, medications, and diet as prescribed.

(2) A hospice-trained registered nurse must be on duty 24 hours per day to provide direct patient care and supervision of all nursing services.

R432-750-26. Inpatient Hospice Infection Control.

(1) The hospice shall develop and implement an infection control program to protect patients, family and personnel from hospice or community associated infections.

(2) The hospice administrator and medical director shall develop written policies and procedures governing the infection control program.

(3) All employees shall wear clean garments or protective clothing at all times, and practice good personal hygiene and cleanliness.

(4) The hospice shall develop and implement a system to investigate, report, evaluate, and maintain records of infections among patients and personnel.

(5) The hospice shall comply with OSHA Blood Borne Pathogen Standards, 29 CFR 1910.1030, July 1, 1998, which is adopted and incorporated by reference.

R432-750-27. Pharmaceutical Services.

(1) The hospice shall establish and implement written policies and procedures to govern the procurement, storage,

administration and disposal of all drugs and biologicals in accordance with federal and state laws.

(2) A licensed pharmacist shall supervise pharmaceutical services. The pharmacist's duties shall include, but not be limited to the following:

(a) advise the hospice and hospice interdisciplinary team on all matters pertaining to the procurement, storage, administration, disposal, and record keeping of drugs and biologicals; interactions of drugs; and counseling staff on appropriate and new drugs;

(b) inspect all drug storage areas at least monthly; and

(c) conduct patient drug regimen reviews at least monthly or more often if necessary, with recommendations to physicians and hospice staff.

(3) The hospice shall establish and implement written policies and procedures for drug control and accountability. Records of receipt and disposition of all controlled drugs shall be maintained for accurate reconciliation.

(4) The pharmaceutical service must ensure that drugs and biologicals are labeled based on currently accepted professional principles, and include the appropriate accessory and cautionary instructions, as well as the expiration date when applicable.

(5) The hospice must provide secure storage for medications. Medications that require refrigeration must be maintained between 36 and 46 degrees F.

(6) The hospice must provide separately locked compartments for storage of controlled drugs as listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, as well as other drugs subject to abuse. Only authorized personnel, in accordance with State and Federal laws, shall have access to the locked medication compartments.

(7) Controlled drugs no longer needed by the patient shall be disposed of by the pharmacist and a registered nurse. The hospice must maintain written documentation of the disposal.

(8) An inpatient hospice shall maintain an emergency drug kit appropriate to the needs of the facility, assembled in consultation with the pharmacist and readily available for use. The pharmacist shall check and restock the kit monthly, or more often as necessary.

R432-750-28. Inpatient Hospice Patient's Rights.

(1) In addition to R432-750-11, the hospice shall honor each patient's rights as follows:

(a) the right to exercise his/her rights as a patient of the facility and as a citizen or resident of the United States;

(b) the right to be free of mental and physical abuse;

(c) the right to be free of chemical and physical restraints for the purpose of discipline or staff convenience;

(d) the right to have family members remain with the patient through the night;

(e) the right to receive visitors at any hour, including small children;

(f) the right for the family to have privacy after a patient's death;

(g) the right to keep personal possessions and clothing as space permits;

(h) the right to privacy during visits with family, friends, clergy, social workers, and advocacy representatives;

(i) the right to send and receive mail unopened; and have access to telephones to make and receive confidential calls;

(j) the right to have family or responsible person informed by the hospice of significant changes in the patient's condition or needs;

(k) the right to participate in religious and social activities of the patient's choice;

(l) the right to manage and control personal cash resources;

(m) the right to receive palliative treatment rather than

treatment aimed at intervention for the purpose of cure or prolongation of life;

(n) the right to refuse nutrition, fluids, medications and treatments; and

(o) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night; except that the hospice may lock doors at night for the protection of patients.

(2) The hospice must post patient rights in a public area of the facility.

(3) Restraints ordered to treat a medical condition must comply with the requirements of R432-150-14.

R432-750-29. Report of Death.

(1) The hospice shall have a written plan to follow at the time of a patient's death. The plan shall include:

(a) recording the time of death;

(b) documentation of death;

(c) notification of attending physician responsible for signing death certificate;

(d) notification of next of kin or legal guardian;

(e) authorization and release of the body to the funeral home;

(2) The hospice must notify the Department of any death resulting from injury, accident, or other possible unnatural cause.

R432-750-30. First Aid.

(1) The hospice shall ensure that at least one staff person is on duty at all times who is certified in cardiopulmonary resuscitation and has training in basic first aid, the Heimlich maneuver and emergency procedures.

(2) First aid training refers to any basic first aid course approved by the American Red Cross, Utah Emergency Medical Training Council, or any course approved by the department.

(3) Each hospice, except those attached to a medical unit, shall have a first aid kit available at a designated location in the facility.

(4) Each hospice shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

R432-750-31. Safeguards for Patients' Monies and Valuables.

(1) The hospice must safeguard patients' cash resources, personal property, and valuables which have been entrusted to the licensee or hospice staff.

(2) A hospice is not required to handle patient's cash resources or valuables. However, if the hospice accepts a patient's cash resources or valuables, then the hospice must safeguard the patient's cash resources in accordance with the following:

(a) No licensee or hospice staff member may use patients' monies or valuables as his own or mingle them with his own. Patients' monies and valuables shall be separated, and intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(b) The licensee must maintain accurate records of patients' monies and valuables entrusted to the licensee.

(c) Records of patients' monies which are maintained as a drawing account must include a control account for all receipts and expenditures, and an account for each patient and supporting receipts filed in chronological order.

(d) Each account shall be kept current with columns for debits, credits, and balance.

(e) Records of patients' monies and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished for funds received.

(f) All money entrusted with the facility in a patient account in excess of \$150 must be deposited in an interest-bearing account in a local financial institution within five days of receipt.

(3) Each inpatient hospice must maintain a separate account for patient funds specific to that inpatient hospice and shall not commingle with patient funds from another inpatient hospice.

(4) Upon discharge, a patient's money and valuables, which have been entrusted to the licensee, shall be returned to the patient that day. Money and valuables kept in an interest-bearing account shall be available to the patient within three working days.

(5) Within 30 days following the death of a patient, except in a medical examiner case, the patient's money and valuables entrusted to the licensee shall be surrendered to the responsible persons, or to the administrator of the estate.

R432-750-32. Emergency and Disaster.

(1) The hospice is responsible for the safety and well-being of patients in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop plans coordinated with the state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all patients and include arrangements for staff response, or provisions of additional staff to ensure the safety of any patient with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing patients, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and patients to assure prompt and efficient implementation.

(c) The licensee and the administrator shall review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The hospices's emergency and disaster response plans shall address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport patients and staff to a safe place within the hospice or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the patients' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the hospice during an emergency;

(j) delivery of essential care and services to hospice occupants when personnel are reduced by an emergency; and

(k) maintenance of safe ambient air temperatures within the facility.

(i) Emergency heating must have the approval of the local fire department.

(ii) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of

the patients in the hospice. The person in charge shall take immediate action in the best interests of the patients.

(iii) The hospice shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the hospice that may exacerbate the medical condition of patients.

(4) Personnel and patients shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The hospice shall:

(a) annually review the procedures with existing staff and patients;

(b) hold simulated disaster drills semi-annually; and

(c) document all drills, including date, participants, problems encountered, and the ability of each patient to evacuate.

(5) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the hospice, relieve subordinates, and take charge.

(6) Each inpatient hospice shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, a first aid kit, and a radio.

(7) The hospice shall post the following information in appropriate locations throughout the facility:

(a) the name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

(8) The hospice must post emergency telephone numbers at each nursing station.

(9) Fire drills and fire drill documentation shall be in accordance with R710-4, State of Utah Fire Prevention Board.

R432-750-33. Food Service.

(1) The hospice may provide dietary services directly, or through a written agreement with a food service provider.

(2) The hospice food service shall comply with the R392-100, Utah Department of Health Food Service Sanitation Rule.

(3) The hospice must maintain for Department review all inspection reports by the local health department.

(4) If the hospice accepts patients requiring therapeutic or special diets, the hospice shall have an approved dietary manual for reference when preparing meals.

(5) Dietary staff shall receive a minimum of four hours of documented in-service training each year.

(6) The hospice must employ or contract with a certified dietician to provide documented quarterly consultation if patients requiring therapeutic diets are admitted.

(7) The hospice must ensure that sufficient food service personnel are on duty to meet the needs of patients.

(8) While performing food service duties, the cook and other kitchen staff shall not perform concurrent duties outside the food service area.

(9) All persons who prepare or serve food shall have a current Food Handler's Permit.

R432-750-34. Nutrition and Menu Planning.

(1) The hospice shall provide at least three meals or their equivalent daily.

(2) Meals shall be served with no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is available in the evening.

(3) The hospice must have between meal snacks of nourishing quality available on a 24 hour basis.

(4) A different menu shall be planned for and available for each day of the week.

(5) The hospice shall ensure that patients' favorite foods are included in their diets whenever possible.

(6) The hospice shall maintain at least a one-week supply of non-perishable food and a three-day supply of perishable food.

(7) All food shall be of good quality, palatable, and attractively served.

R432-750-35. Pets in the Facility.

(1) A hospice may permit patients to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinances.

(2) Pets must be clean and disease-free.

(3) The pets' environment must be kept clean.

(4) Small pets shall be kept in appropriate enclosures.

(5) Pets that are not confined shall be under leash control, or voice control.

(6) Pets that are kept at the facility shall have documented current vaccinations.

(7) Upon approval of the administrator, family members may bring patients' pets to visit. Visiting pets must have current vaccinations.

(8) Hospices with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling of droppings and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in food preparation, storage or central dining areas, or in any area where their presence would create a significant health or safety risk to others.

R432-750-36. Laundry Services.

(1) The hospice must provide laundry services to meet the needs of the patients.

(2) If the hospice contracts for laundry services, the hospice must obtain a signed, dated agreement from the contracted laundry service that details all services provided. The contracted laundry service must meet the requirements of R432-750-36(3)(c) through (f).

(3) Each hospice that provides in-house laundry services must meet the following requirements:

(a) The hospice must maintain a supply of clean linen to meet the needs of the patients.

(b) Clean bed linens shall be changed as often as necessary, but no less than twice each week.

(c) Soiled linen and clothing shall be stored separate from clean linen and not allowed to accumulate in the facility.

(d) Laundry equipment shall be in good repair.

(e) The laundry area shall be separate and apart from any room where food is stored, prepared, or served.

(f) Personnel shall handle, store, process, and transport linens in a manner to minimize contamination by air-borne particles and to prevent the spread of infection.

R432-750-37. Maintenance Services.

(1) The hospice shall provide maintenance services to ensure that equipment, buildings, furnishings, fixtures, spaces, and grounds are safe, clean, operable, and in good repair.

(2) The hospice shall conduct a pest control program through a licensed pest control contractor or a qualified employee to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(3) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition with regard to ice, snow, and other hazards.

R432-750-38. Waste Storage and Disposal.

The hospice must provide facilities and equipment 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 authority.

R432-750-39. Water Supply.

- (1) Hot water provided to patient tubs, showers, whirlpools, and hand washing facilities shall be regulated for safe use within a temperature range of 105 - 120 degrees F.
- (2) Thermostatically controlled automatic mixing valves may be used to maintain hot water at the above temperatures.

R432-750-40. Housekeeping Services.

- (1) The hospice must provide housekeeping services to maintain a clean, sanitary, and healthful environment.
- (2) If the hospice contracts for housekeeping services with an outside entity, the hospice must obtain a signed and dated agreement that details the services provided.
- (3) The hospice must provide safe, secure storage of cleaners and chemicals. In areas with potential access by children or confused disoriented patients, cleaners and chemicals must be locked in a secure area to prevent unauthorized access.
- (4) Personnel engaged in housekeeping or laundry services may not be concurrently engaged in food service or patient care.
- (5) The hospice must establish and implement policies and procedures to govern the transition of housekeeping personnel to food service or direct patient care duties.

R432-750-41. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health care facilities

October 1, 2011

26-21-5

Notice of Continuation September 15, 2016

26-21-6

R432. Health, Family Health and Preparedness, Licensing.**R432-950. Mammography Quality Assurance.****R432-950-1. Authority.**

This rule is adopted pursuant to Section 26-21a-203.

R432-950-2. Compliance.

Facilities shall be in full compliance with R432-950 and 42 U.S.C. 263b, the Mammography Quality Standards Act of 1992.

R432-950-3. Definitions.

(1) "Diagnostic mammography" means performing a mammogram on a woman suspected of having breast cancer.

(2) "Facility" means a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility that conducts breast cancer screening or diagnosis, including any or all of the following: operation of equipment to produce a mammogram, processing of film, initial interpretation of the mammogram, and the viewing conditions for that interpretation.

(3) "Image quality" means the overall clarity and detail of an x-ray including spatial resolution or resolving power, sharpness, and contrast.

(4) "Mammogram" means a radiographic image of the breast.

(5) "Mammogram unit" means an x-ray system designed specifically for breast imaging, providing optimum imaging geometry, a device for breast compression, and low dose exposure that can produce reproducible images of high quality.

(6) "Mammography" means radiography of the breast to diagnose breast cancer.

(7) "Phantom" means an artificial test object simulating the average composition of, and various structures within, the breast.

(8) "Screening mammography" means a standard readable two-view per breast low dose radiographic examination to detect unsuspected breast cancer using specifically designed equipment dedicated for mammography.

(9) "Quality assurance" means a program designed to achieve the desired degree or grade of care including evaluation and educational components to identify and correct problems in interpreting and obtaining mammogram.

(10) "Quality control" means the process of testing and maintaining the highest possible standards of equipment performance and acquisition of radiographic images.

R432-950-4. Facility Quality Assurance.

(1) The facility shall conduct a quality assurance program to assure the operation and the services provided are in accordance with R432-950.

(2) The facility shall correct identified deficiencies to produce desired results.

(3) The facility shall evaluate the corrections required for a systems change to update the quality assurance plan.

R432-950-5. Compliance with State and Local Rules.

(1) A supplier of mammography services shall comply with all applicable Federal, State, and local laws and regulations pertaining to radiological services and mammography services.

(2) The facility shall maintain documentation showing that it complies with all applicable state and local laws and rules pertaining to radiological and mammography services. This includes the following:

(a) Certification of the facility;

(b) Licensure or certification of the personnel;

(c) Documentation that the facility has been approved by the American College of Radiology (ACR).

R432-950-6. Facility Oversight.

(1) The facility is responsible for the overall quality of the

mammography conducted.

(2) The facility shall have available, either on staff or through arrangement, sufficient qualified staff to meet patients' needs relating to mammography. Sufficient staff includes the following:

(a) A designated physician supervisor who meets the requirements for qualified physicians specified by the Utah Department of Commerce;

(b) A medical physicist who is certified by the American Board of Radiology in Radiological Physics or Diagnostic Radiological Physics, or who meets the requirements specified by the Department of Environmental Quality;

(c) One or more radiologic technologists who meet the requirements specified by the Utah Department of Commerce pursuant to Section 26-21a-203.

R432-950-7. Physician, Physicist and Radiologic Technologist Standards.

(1) A physician interpreting mammograms or supervising mammography, or both, shall provide documentation to the Department upon request showing he meets minimum qualifications specified by the Utah Department of Commerce and the Mammography Quality Standards Act. A qualified physician shall interpret the results of all mammograms. Diagnostic mammography shall be done under the direct on-site supervision of a qualified physician.

(2) A radiologic technologist shall meet the following requirements and the facility shall provide documentation to the Department upon request showing the radiologic technologist:

(a) Meets minimum qualifications specified by the Utah Department of Commerce and the Mammography Quality Standards Act;

(b) Obtains on-the-job training in mammography under the supervision of a qualified physician, or the supervising radiologic technologist, or both;

(c) Is competent in breast positioning and compression as determined from critiques by a qualified physician of mammogram films taken by the radiologic technologist;

(d) Is knowledgeable in facility policies concerning technical factors, radiation safety, radiation protection, and quality control as evaluated by the radiologic technologist's supervisor;

(e) Receives continuous supervision and feedback on image quality from the interpreting or supervising physician.

(3) A medical physicist must:

(a) be certified in an acceptable specialty by one of the bodies approved by the FDA to certify medical physicists;

(b) be licensed or approved by a State to conduct evaluations of mammography equipment as required by State law; or

(c) for those medical physicists associated with facilities that apply for accreditation before October 27, 1997, who meet training and experience requirements of Mammography Quality Standards Act and its implementing regulations.

R432-950-8. Personnel Requirements.

(1) The facility shall document that new staff orientation and ongoing in-service training is based on current written facility policies and procedures.

(2) Personnel shall have access to the facility's written policies and procedures when on duty.

(3) The facility shall implement a standardized orientation program for each employment position including the time for completing training.

(4) A written in-service training program shall identify the topics and frequency of training including an annual review of facility policies and procedures.

(5) The facility shall maintain personnel records documenting that each employee is qualified and competent to

perform respective duties and responsibilities by means of appropriate licensure or certification, experience, orientation, ongoing in-service training, and continuing education.

(6) The facility shall retain personnel records for terminated employees for a minimum of four years following the final date of termination.

R432-950-9. Equipment Standards.

(1) Mammogram units shall be designed specifically for mammography and shall have a compression device and the capability for placement of a grid.

(2) The facility shall maintain current written policies and procedures for operating equipment.

(3) Prior to initiating operation of a mammogram unit it shall be registered with the Utah Department of Environmental Quality.

R432-950-10. Safety Standards.

(1) The facility shall maintain documentation that the mammogram unit is safe and that proper radiation safety practices are being followed.

(2) The facility shall maintain documentation that employees have been trained on safety standards for radiation.

(3) The facility shall maintain procedure manuals and logs for equipment quality control.

(4) The facility shall maintain documentation that the quality control program complies with ACR quality control manuals for mammography or the equivalent.

(a) Equivalent programs shall include a quality control program for equipment, mammogram unit performance, and film processors, approved by the Utah Department of Environmental Quality.

(b) Equivalent programs shall contain stated objectives achieved by procedures comparable to objectives and procedures in the American College of Radiology Quality Control Manuals for Mammography.

(5) Accreditation by the American College of Radiology Mammography Program documents compliance with mammogram unit quality control requirements in R432-950-10(1).

R432-950-11. Technical Specifications for Mammography.

(1) The facility shall have available a phantom for use in the facility's ongoing quality control program.

(2) The facility shall evaluate image quality at least monthly using a phantom that produces measurements satisfactory to the supervising physician.

(3) The facility's evaluation of clinical images shall include the following:

- (a) Positioning;
- (b) Compression;
- (c) Exposure level;
- (d) Resolution;
- (e) Contrast;
- (f) Noise;
- (g) Exam Identification;
- (h) Artifacts.

R432-950-12. Physician Supervisor Responsibility.

(1) A physician supervisor is responsible for general oversight of the quality control program of the facility. Oversight responsibilities include:

- (a) Annual review of the policy and procedure manual;
- (b) Verification that the equipment and facility personnel meet applicable federal, state and local licensure and registration requirements;
- (c) Verification that equipment is performing properly;
- (d) Verification that safe operating procedures are used to protect facility personnel and patients;

(e) Verification that all other requirements of R432-950 are being met.

(2) The physician shall document annually that he provides oversight for the quality control of the mammography service.

R432-950-13. Mammography Records.

(1) A medical record shall be maintained for each patient on whom screening or diagnostic mammography is performed.

(a) Provision shall be made for the filing, safe storage and accessibility of medical records.

(b) Records shall be protected against loss, defacement, tampering, fires, and floods.

(c) Records shall be protected against access by unauthorized individuals.

(d) All records shall be readily available upon the request of:

- (i) The attending physician,
 - (ii) Authorized representatives of the Department for determining compliance with licensure rules;
 - (iii) Any other person authorized by written consent.
- (e) The facility shall establish a system to assure that the patient's mammogram is accessible for clinical follow-up when requested.

(i) A copy of the mammogram and other appropriate information shall be sent to the requesting party responsible for subsequent medical care of the patient no later than 14 working days from the request for information.

(ii) Medical information may be released only upon the written consent of the patient or her legal representative.

(2) The facility shall attempt to obtain a prior mammogram for each patient if the prior mammogram is necessary for the physician to properly interpret the current exam.

(3) The interpreting physician shall prepare and sign a written report of his interpretation of the results of the screening mammogram.

(a) The written report shall include a description of detected abnormalities and recommendations for subsequent follow-up studies.

(b) The interpreting physician shall render the report as soon as reasonably possible.

(c) The interpreting physician or his designee shall document and communicate the results of the report to the referring physician or his designated representative by telephone, by certified mail, or in such a manner that receipt of the report is assured.

(d) The interpreting physician or his designee shall notify self-referred patients, that is, patients who have no referring physician, of the results of the screening study in writing and in lay language.

(4) The interpreting physician or his designee shall document and communicate the results of all diagnostic reports in the high probability category with suspicion of breast cancer to the referring physician or his designated representative by telephone, by certified mail, or in such a manner that receipt of the report is assured.

(5) The physician shall document and communicate in person in lay language, by certified mail, or in such a manner that receipt of the diagnostic report is assured to all self-referred patients within the high probability category with a suspicion of breast cancer. The report shall indicate whether the patient needs to consult with a physician.

(a) The interpreting physician or his designee shall attempt to make a follow-up contact with the patient to determine whether she has consulted a physician for follow-up care.

(b) The interpreting physician or his designee shall document in the patient's medical record attempts to communicate the results to the patient.

(6) The facility shall retain the original and subsequent

mammograms for a period of at least five years from the date of the procedure.

R432-950-14. Education.

(1) A patient has the right to be treated with dignity and afforded privacy during the examination.

(2) The facility shall establish an education system to ensure that the patient understands:

(a) The purpose of the mammogram and how it is used to screen for breast cancer;

(b) The process required to obtain the mammogram;

(c) The importance of the screening mammography to her ongoing health.

R432-950-15. Collecting and Reporting Data.

(1) The facility shall establish a system for collecting and periodic reporting of mammography examinations and clinical follow-up as provided below:

(a) Clinical follow-up data shall include the follow-up on the disposition of positive mammographic findings, and the correlation of the surgical biopsy results with mammogram reports.

(b) The facility shall maintain records correlating the positive mammographic findings to biopsies done and the number of cancers detected.

(c) The facility shall report the results of the outcomes annually to the Department or its designated agent, on forms furnished by the Department. The report shall include as a minimum:

(i) The number of individuals receiving screening mammograms;

(ii) Total number of patients recommended for biopsy based on a screening mammogram;

(iii) Total number of patients diagnosed with breast cancer based on a screening mammogram;

(iv) The number and names of individuals with positive mammographic findings lost to follow-up.

(2) The Department or its designated agent shall provide each reporting facility, on a schedule determined by the Department, summary statistical reports which permit each facility to compare its results to statewide and other comparative statistics.

R432-950-16. State Certification.

(1) No facility, person or governmental unit acting severally or jointly with any other person, may establish, conduct or maintain a mammography unit without first obtaining a state certificate from the Department.

(2) An applicant for state certification shall file a Request for Agency Action/Certification Application with the Utah Department of Health on forms furnished by the Department.

(3) Each facility shall comply with all zoning, building and licensing laws, rules and ordinances and codes of the city and county in which the facility is located. The applicant shall submit the following to the Department:

(a) Verification of participation and quality control by the American College of Radiology for monitoring mammography services in the facility;

(b) Verification of licensure or certification of required personnel;

(c) Fees established by the Utah State Legislature pursuant to Section 63-38-3.

(4) The Department shall render a decision on the initial certification within 60 days of receipt of a completed application packet or within 6 months of date that the first component of an application packet was received.

(a) Upon verification of compliance with state certification requirements, the Department shall issue a provisional certificate.

(b) The Department shall issue a notice of agency decision under the procedures for informal adjudicative proceedings denying a state certification if the applicant is not in compliance with the applicable laws or rules. The notice shall state the reasons for denial.

(5) Certificate Contents and Provisions. The state certificate shall include the name of the mammography facility, owner, supervising physician, address, issue and expiration dates of the state certificate and the certificate number.

(b) The state certificate may be issued only to the owner and for the premises described in the application and shall not be assignable or transferable.

(c) Each state certificate is the property of the Department and shall be returned within five days if the certification is suspended, revoked, or if the operation of the facility is discontinued.

(d) The state certificate shall be prominently displayed where it can be easily viewed by the public.

(6) Certification periods shall be for 24 months, and expire at midnight 24 months from the date of issuance.

(a) A request for renewal and applicable fees shall be filed with the Department 15 days before the state certificate expires.

(b) Failure to make a timely renewal shall result in assessment of late fees as established by the Utah State Legislature pursuant to Section 26-21a-203.

(7) The owner shall submit a Request for Agency Action/Application to amend or modify state certification status at least 30-days before any of the following proposed or anticipated changes occur:

(a) Change in the name of the facility;

(b) Change in the supervising physician;

(c) Change in the owner of the facility.

(8) The owner who wants to cease operation shall complete the following:

(a) Notify the patients within 30 days before the effective date of closure.

(b) Make adequate provision for the safekeeping of records and notify the department where those records will be stored.

(c) Return the state certificate to the Department within five days after the facility ceases operation.

(9) The Department may issue a provisional state certificate to a facility as an initial certification and may issue a provisional state certification to a facility that does not fully comply with the requirements for a standard certification but has made acceptable progress towards meeting the requirements.

(a) In granting a provisional state certification, the Department must be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(b) A provisional state certificate is nonrenewable and shall be issued for no more than 6 months.

R432-950-17. Inspections.

Upon presentation of proper identification, authorized representatives of the Department shall be allowed to enter a facility at any reasonable time without a warrant and be permitted to review records including medical records, when it is determined by the Department to be necessary to ascertain compliance with state law and rules promulgated under Section 26-21a-205.

(1) Each facility may be inspected by the Department or its designee to determine compliance with minimum standards and the applicable rules.

(2) Upon receipt of the survey results of the ACR, the facility shall submit copies of the certificate and the survey report and recommendations.

(3) The accreditation documents are open to the public.

(4) The Department may conduct periodic validation inspections of facilities accredited by the ACR for the purpose

of determining compliance with state requirements.

R432-950-18. Enforcement and Appeal Process.

Whenever the Department has reason to believe that the facility is in violation of Section 26-21a-203 or any of the rules adopted pursuant to Title 26, Chapter 21, the Department shall issue a written Statement of Findings/Plan of Correction to the certified facility.

KEY: health care facilities, mammography

June 2, 2010

Notice of Continuation September 15, 2016

26-21a-203

R628. Money Management Council, Administration.**R628-10. Rating Requirements to Be a Permitted Depository.****R628-10-1. Purpose.**

This rule establishes a uniform standard for public treasurers to evaluate the financial condition of a Permitted depository institutions to determine if acceptance of Utah public funds by those institutions would expose public treasurers to undo risk. The criteria is applicable to all Permitted depository institutions to determine if they are eligible to accept deposits of Utah public funds. The criteria established by this rule is designed to be flexible enough to ensure that public treasurers will be able to receive competitive market rates on deposits placed outside this state while maintaining sufficient protection from loss.

R628-10-2. Authority.

This rule is issued pursuant to Sections 51-7-17(4) and 51-7-18(2)(b)(iv).

R628-10-3. Definitions.

The terms used in this rule are defined in Section 51-7-3.

R628-10-4. Rating Requirements for Permitted Depositories.

(1) The Permitted depository must meet the following criteria to accept deposits from Utah public entities:

- (a) The deposits must be federally insured;
- (b) the total assets of the Permitted depository must equal \$5 billion or more as of December 31 of the preceding year, and;
- (c) fixed rate negotiable deposits which meet the criteria of Section 51-7-11(3)(f) must, at the time of investment, have the equivalent of an "A" or better short term rating by at least two NRSRO's, or;
- (d) variable rate negotiable deposits which meet the criteria of Section 51-7-11(3)(m) must, at the time of investment, have the equivalent of an "A" or better, long term rating, by at least two NRSRO's.

(2) Permitted depository institutions whose ratings drop below the minimum ratings established in R628-10-4(1), above, are no longer eligible to accept new deposits of Utah public funds. Outstanding deposits may be held to maturity, but may not be renewed and no additional deposits may be made by any public treasurer.

R628-10-5. Restrictions on Concentration of Deposits in Any One Permitted Depository Institution.

The maximum amount of any public treasurers portfolio which can be invested in any one Permitted depository institution shall be as follows:

- (1) Portfolios of \$10,000,000 or less may not invest more than 10% of the total portfolio with a single issuer.
- (2) Portfolios greater than \$10,000,000 but less than \$20,000,000 may not invest more than \$1,000,000 in a single issuer.
- (3) Portfolios of \$20,000,000 or more may not invest more than 5% of the total portfolio with a single issuer.

The amount or percentages used in determining the amount of Permitted deposits a treasurer may purchase, shall be determined by the book value of the portfolio at the time of purchase.

KEY: public investments, banking law, depository, professional competency
September 7, 2016

51-7-17(3)
51-7-18(2)(b)

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-100. Administrative: Introduction.****R645-100-100. Scope.**

110. General Overview. The rules presented herein establish the procedures through which the Utah State Division of Oil, Gas and Mining will implement those provisions of the Coal Mining Reclamation Act of 1979, (the Act) pertaining to the effects of coal mining and reclamation operations and pertaining to coal exploration.

120. R645 Rules Organization. The R645 Rules have been subdivided into the four major functional aspects of the Division's coal mining and exploration State Program.

121. The heading entitled ADMINISTRATIVE encompasses general introductory material, definitions applicable throughout the R645 Rules, procedures for the exemption of certain coal extraction activities, designating areas unsuitable for coal mining, protection of employees, and requirements for blaster certification.

122. The heading entitled COAL EXPLORATION establishes the minimum requirements for acquiring approval and identifies performance standards for coal exploration.

123. The heading entitled COAL MINE PERMITTING describes certain procedural requirements and options attendant to the coal mine permitting process. Moreover, the minimum requirements for acquiring a permit for a coal mining and reclamation operation are identified.

124. The heading entitled INSPECTION AND ENFORCEMENT delineates the authority, administrative procedures, civil penalties, and employee protection attendant to the Division's inspection and enforcement program.

130. Effective Date. The provisions of R645-100 through and including R645-402 will become effective and enforceable upon final approval by the Office of Surface Mining, U.S. Department of the Interior. Existing coal regulatory program rules, R645 Chapters I and II, will be in effect until approval of R645-100 through R645-402 by the Office of Surface Mining and will be considered repealed upon approval of R645-100 through R645-402.

R645-100-200. Definitions.

As used in the R645 Rules, the following terms have the specified meanings:

"Abandoned site" means, for the purpose of R645-400, a coal mining and reclamation operation for which the Division has found in writing that,

(a) All coal mining and reclamation operations at the site have ceased;

(b) The Division has issued at least one notice of violation or the initial program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(c) The Division:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to section 40-10-20(5), 40-10-20(6), 40-10-22(1)(d), or 40-10-22(2)(a) of the Act to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(d) Where the site is, or was, permitted and bonded:

(i) The permit has either expired or been revoked; and

(ii) The Division has initiated and is diligently pursuing forfeiture of, or has forfeited any available performance bond.

(e) In lieu of the inspection frequency established in R645-400-130, the Division shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

(1) In selecting an alternate inspection frequency authorized under part (e) of this definition, the Division shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (2) below. Following the inspection and public notice, the Division shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i) How the site meets each of the criteria under the definition of an abandoned site and thereby qualifies for a reduction in inspection frequency;

(ii) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to change into, imminent dangers to the health or safety of the public or significant environmental harms to land, air or water resources;

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with time; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under part (e)(1) of this definition shall be provided as follows:

(i) The Division shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the office where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

"Account" means the Abandoned Mine Reclamation Account established pursuant to Section 40-10-25 of the Act.

"Acid Drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity discharged from an active, inactive, or abandoned coal mining and reclamation operation, or from an area affected by coal mining and reclamation operations.

"Acid-Forming Materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

"Act" means Utah Code Annotated Section 40-10-1 et seq.

"Adjacent Area" means the area outside the permit area where a resource or resources, determined according to the

context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed coal mining and reclamation operations, including probable impacts from underground workings.

"Administratively Complete Application" means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain information addressing each application requirement of the State Program and to contain all information necessary to initiate processing and public review.

"Affected Area" means any land or water surface area which is used to facilitate, or is physically altered by, coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use. Editorial Note: The definition of "Affected area", insofar, as it excludes roads which are included in the definition of "Surface coal mining operations", was suspended at 51 FR 41960, Nov. 20, 1986. Accordingly, Utah suspends the definition of Affected Area insofar as it excludes roads which are included in the definition of "coal mining and reclamation operations."

"Agricultural Use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Alluvial Valley Floors" means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities, but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass-movement accumulations, and windblown deposits.

"Applicant" means any person seeking a permit, permit change, and permit renewal, transfer, assignment, or sale of permit rights from the Division to conduct coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Applicant/Violator System" (AVS) means an automated information system of applicant, permittee, operator, violation and related data the Office maintains to assist in implementing the Federal Act.

"Application" means the documents and other information filed with the Division under the R645 Rules for the issuance of permits; permit changes; permit renewals; and transfer, assignment, or sale of permit rights for coal mining and reclamation operations or, where required, for coal exploration.

"Approximate Original Contour" means that surface

configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all highwalls, spoil piles, and coal refuse piles having a design approved under the R645 Rules and prepared for abandonment. Permanent water impoundments may be permitted where the Division has determined that they comply with R645-301-413.100 through R645-301-413.334, R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-542.400, R645-301-733.220 through R645-301-733.224, R645-301-743, R645-302-270 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900.

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

"Arid and Semiarid Area" means, in the context of ALLUVIAL VALLEY FLOORS, an area where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields in Utah are in arid and semiarid areas.

"Auger Mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

"Best Technology Currently Available" means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetation selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds in accordance with R645-301 and R645-302. Within the constraints of the State Program, the Division will have the discretion to determine the best technology currently available on a case-by-case basis, considering among other things the economic feasibility of the equipment, devices, systems, methods or techniques, as authorized by the Act and the R645 Rules.

"Blaster" means a person who is directly responsible for the use of explosives in connection with surface blasting operations incidental to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES or SURFACE COAL MINING AND RECLAMATION ACTIVITIES, and who holds a valid certificate issued by the Division in accordance with the statutes and regulations administered by the Division governing training, examination, and certification of persons responsible for the use of explosives in connection with surface blasting operations incident to coal mining and reclamation operations.

"Board" means the Board of Oil, Gas and Mining for the state of Utah, or the Board's delegated representative.

"Cemetery" means any area of land where human bodies are interred.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D388-95.

"Coal Exploration" means the field gathering of: (a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary

to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning coal mining and reclamation operations under the requirements of the R645 Rules.

"Coal Mine Waste" means coal processing waste and underground development waste.

"Coal Mining and Reclamation Operations" means (a) activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 40-10-18 of the Act, surface coal mining and reclamation operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include all activities necessary and incidental to the reclamation of the operations, excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in-situ distillation; or retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16-2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 40-10-8 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and (b) the areas upon which the activities described under part (a) of this definition occur or where such activities disturb the natural land surface. These areas will also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"Coal Mining and Reclamation Operations Which Exist on the Date of Enactment" means all coal mining and reclamation operations which were being conducted on August 3, 1977.

"Coal Preparation or Coal Processing" means the chemical and physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal Processing Plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. Coal processing plant includes facilities associated with coal processing activities, such as, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

"Coal Processing Waste" means earth materials which are separated from the product coal during cleaning, concentrating, or the processing or preparation of coal.

"Collateral Bond" means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the Division of: (a) a cash account, which will be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the Division upon demand, or the deposit of cash directly with the Division; (b) negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the

possession of, the Division; (c) negotiable certificates of deposit, made payable or assigned to the Division and placed in its possession, or held by a federally insured bank; (d) an irrevocable letter of credit of any bank organized or authorized to transact business in the United States payable only to the Division upon presentation; (e) a perfected, first lien security interest in real property in favor of the Division; or (f) other investment grade rated securities having a rating of AAA or AA or A, or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the Division.

"Combustible Material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or Institutional Building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions including, but not limited to educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles, and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and Accurate Application" means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain all information required under the Act, the R645 Rules, and the State Program that is necessary to make a decision on permit issuance.

"Continuously Mined Areas" means land which was mined for coal by underground mining operations prior to August 3, 1977, the effective date of the Federal Act, and where mining continued after that date.

"Control or Controller" means:

(a) A permittee of a coal mining and reclamation operation;

(b) An operator of a coal mining and reclamation operation; or

(c) Any person who has the ability to determine the manner in which a coal mining and reclamation operation is conducted.

"Cooperative Agreement" means the agreement between the Governor of the State of Utah and the Secretary of the Department of the Interior as published at 30 CFR 944.30.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Cumulative Impact Area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining will include, at a minimum, the entire projected lives through bond releases of: (a) the proposed operation, (b) all existing operations, (c) any operation for which a permit application has been submitted to the Division, and (d) all operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

"Cumulative measurement period" means, for the purpose of R645-106, the period of time over which both cumulative production and cumulative revenue are measured.

(a) For purposes of determining the beginning of the cumulative measurement period, subject to Division approval,

the operator must select and consistently use one of the following:

(i) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or

(ii) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(b) For annual reporting purposes pursuant to R645-106-900, the end of the period for which cumulative production and revenue is calculated is either

(i) For mining areas where coal or other minerals were extracted prior to July 1, 1992, June 30, 1992, and every June 30 thereafter; or

(ii) For mining areas where extraction of coal or other minerals commenced on or after July 1, 1992, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

"Cumulative production" means, for the purpose of R645-106, the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by R645-106-700.

"Cumulative revenue" means, for the purpose of R645-106, the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

"Current Assets" means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

"Current Liabilities" means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

"Direct Financial Interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings, and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining and reclamation operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.

"Director" means the Director, Utah State Division of Oil, Gas and Mining, or the Director's representative.

"Director of the Office" means the Director of the Office of Surface Mining, Reclamation and Enforcement, U.S. Department of the Interior.

"Disturbed Area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by coal mining and reclamation operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by R645-301-800 is released. For the purposes of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763, disturbed area will not include those areas (a) in which the only coal mining and reclamation operations include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with R645-301 and R645-302; and (b) for which the upstream area is not otherwise disturbed by the operator.

"Diversion" means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

"Division" means Utah State Division of Oil, Gas and Mining, the designated state regulatory authority.

"Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

"Edge Effect" means the positive effect created by the juxtaposition of two diverse habitats.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means any person employed by the Division who performs any function or duty under the Act, and does not mean the Board of Oil, Gas and Mining which is excluded from this definition.

"Ephemeral Stream" means a stream which flows only in direct response to precipitation in the immediate watershed, or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

"Essential Hydrologic Functions" means the role of an ALLUVIAL VALLEY FLOOR in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape, and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

"Excess Spoil" means spoil material disposed of in a location other than the mined-out area, provided that the spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with R645-301-553.220 in nonsteep slope areas will not be considered excess spoil.

"Existing Structure" means a structure or facility used in connection with or to facilitate coal mining and reclamation operations for which construction began prior to January 21, 1981.

"Extraction of Coal as an Incidental Part" means the extraction of coal which is necessary to enable government-financed construction to be accomplished. For purposes of R645-102, only that coal extracted from within the right-of-way in the case of a road, railroad, utility line, or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction will be subject to the requirements of the Act and the R645 Rules.

"Federal Act" means the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87).

"Federal Lands" means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

"Fixed Assets" means plants and equipment, but does not include land or coal in place.

"Flood Irrigation" means, with respect to ALLUVIAL VALLEY FLOORS, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

"Fragile Lands" means, for the purposes of R645-103-300, geographic areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged or be destroyed by coal mining and reclamation operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmark sites, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and aesthetic features, areas of recreational value due to high environmental quality.

"Fugitive Dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or coal mining and reclamation operations, or both. During coal mining and reclamation operations, it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

"Fund" means the Abandoned Mine Reclamation Account established pursuant to 40-10-25 of the Act.

"Government-Financed Construction" means, for the purposes of R645-102, construction funded 50 percent or more by funds appropriated from a government-financing agency's budget or obtained from general revenue bonds, but will not mean government-financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

"Government Financing Agency" means, for the purposes of R645-102 a federal, state, county, municipal, or local unit of government, or a department, bureau, agency or office of the unit which, directly or through another unit of government, finances construction.

"Gravity Discharge" means, with respect to UNDERGROUND MINING AND RECLAMATION ACTIVITIES, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine, to the level of the discharge, is not gravity discharge.

"Ground Cover" means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area of measurement.

"Ground Water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

"Habitats of Unusually High Value for Fish and Wildlife" means an area defined by the state as crucial-critical use areas for wildlife.

"Half-Shrub" means a perennial plant with a woody base whose annually produced stems die back each year.

"Head-of-Hollow Fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees, or the average slope of the profile of the hollow from the toe of the fill to the top of the fill, is greater than ten degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

"Higher or Better Uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner, or the community, than the premining land uses.

"Highwall" means the face of exposed overburden and coal in an open cut of surface coal mining and reclamation activities or for entry to underground mining activities.

"Highwall Remnant" means that portion of highwall that remains after backfilling and grading of a REMINING permit area.

"Historic Lands" means, for the purposes of R645-103-300, areas containing historic, cultural, and scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a Utah or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

"Historically Used for Cropland" means (a) lands that have been used for cropland for any five years or more out of the ten

years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conducting of coal mining and reclamation operations; (b) lands that the Division determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (c) lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Hydrologic Balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic Regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Imminent Danger to the Health and Safety of the Public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

"Impounding Structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semiliquid material.

"Impoundments" means all water, sediment, slurry, or other liquid or semiliquid holding structures, either naturally formed or artificially built.

"Indian Lands" means all lands, including mineral interests, within the exterior boundaries of any federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

"Indirect Financial Interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child(ren) and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining and reclamation operations in which the spouse, minor child(ren), or other resident relatives hold a financial interest.

"In-Situ Processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in-situ gasification, in-situ leaching, slurry mining, solution mining, borehole mining, and fluid-recovery mining.

"Intermittent Stream" means a stream, or reach of a stream, that is below the local water table for at least some part of the year and obtains its flow from both surface runoff and groundwater discharge.

"Irreparable Damage to the Environment" means any damage to the environment in violation of the Act, the State Program, or the R645 Rules that cannot be corrected by actions of the applicant.

"Knowing or Knowingly" means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

"Land Use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another will be considered as a change to an alternative land use which is subject to approval by the Division.

CROPLAND - Land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

DEVELOPED WATER RESOURCES - Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, flood control, and water supply.

FISH AND WILDLIFE HABITAT - Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

FORESTRY - Land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

GRAZING LAND - Land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

INDUSTRIAL/COMMERCIAL - Land used for (a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products; this includes all heavy and light manufacturing facilities, or (b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

PASTURE LAND OR LAND OCCASIONALLY CUT FOR HAY - Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

RECREATION - Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

RESIDENTIAL - Land used for single and multiple-family housing, mobile home parks, or other residential lodgings.

UNDEVELOPED LAND OR NO CURRENT USE OR LAND MANAGEMENT - Land that is undeveloped or if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

"Liabilities" means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

"Material Damage" for the purposes of R645-301-525, means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

"Materially Damage the Quantity or Quality of Water"

means, with respect to ALLUVIAL VALLEY FLOORS, to degrade or reduce, by coal mining and reclamation operations, the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support agricultural activities.

"Mining" means, for the purposes of R645-400-351, (a) extracting coal from the earth or coal waste piles and transporting it within or from the permit area; and (b) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than a mine site.

"Mining area" means, for the purpose of R645-106, an individual excavation site or pit from which coal, other minerals and overburden are removed.

"Moist Bulk Density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105 degrees Celsius.

"NRCS" means Natural Resources Conservation Service, U.S. Department of Agriculture.

"MSHA" means the Mine Safety and Health Administration, U.S. Department of Labor.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

"Natural Hazard Lands" means, for the purposes of R645-103-300, geographic areas in which natural conditions exist which pose or, as a result of coal mining and reclamation operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

"Net Worth" means total assets minus total liabilities and is equivalent to owners' equity.

"Non-commercial Building" means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined at R645-100-200. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

"Noxious Plants" means species that have been included on the official Utah list of noxious plants.

"Occupied Dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

"Occupied Residential Dwelling and Structures Related Thereto" means, for purposes of R645-301, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

"Office" means Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

"Operator" means any person engaged in coal mining who removes, or intends to remove, more than 250 tons of coal from the earth or from coal refuse piles by mining within 12

consecutive calendar months in any one location.

"Other minerals" means, for the purpose of R645-106, any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

"Other Treatment Facilities" means, for the purposes of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763, any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and that are utilized to prevent additional contribution of dissolved or suspended solids to stream flow or runoff outside the permit area or to comply with all applicable State and Federal water quality laws and regulations.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Own, Owner, or Ownership" means being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity, except when used in the context of ownership of real property.

"Parent Corporation" means corporation which owns or controls the applicant.

"Perennial Stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

"Performance Bond" means a surety bond, collateral bond, or self-bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, the R645 Rules, the State Program, and the requirements of the permit and reclamation plan.

"Performing Any Function or Duty Under This Act" means those decisions or actions, which if performed or not performed by a board member or employee, affect the State Program under the Act.

"Permanent Diversion" means a diversion remaining after coal mining and reclamation operations are completed which has been approved for retention by the Division and other appropriate state and federal agencies.

"Permanent Impoundment" means an impoundment which is approved by the Division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permit" means a permit to conduct coal mining and reclamation operations issued by the Division pursuant to the State Program. For purposes of the federal lands program, permit means a permit issued by the Division pursuant to the cooperative agreement with the Secretary.

"Permit Area" means the area of land, indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond under R645-301-800, and which will include the area of land upon which the operator proposes to conduct coal mining and reclamation operations under the permit, including all disturbed areas, provided that areas adequately bonded under another valid permit may be excluded from the permit area.

"Permit Change" means any coal mining and reclamation operations not previously approved by the Division in the Permit or in any previously-approved permit change under R645-303-220.

"Permittee" means a person holding, or required by the Act or the R645 Rules to hold, a permit to conduct coal mining and reclamation operations issued by the Division pursuant to the State Program or, under the cooperative agreement pursuant to Section 523 of P.L. 95-87, by the Director of the Office and the Division.

"Person" means an individual, Indian tribe when conducting coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint-stock company, firm, company, corporation, cooperative or other business organization, and any agency, unit, or instrumentality of federal, state, or local government including any publicly owned utility or publicly owned corporation of federal, state, or local governments.

"Person Having an Interest Which Is or May Be Adversely Affected or Person With a Valid Legal Interest" means any person (a) who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the Division, or the Board, or (b) whose property is or may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the Division or the Board.

"Precipitation Event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in the R645 Rules, precipitation event also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

"Previously Mined Area" means land affected by coal mining and reclamation operations prior to August 3, 1977, that has not been reclaimed to the standards of Ut. Admin. R645 or 30 CFR chapter VII.

"Prime Farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (Federal Register Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined herein.

"Principal Shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock.

"Prohibited Financial Interest" means any direct or indirect financial interest in any coal mining and reclamation operation.

"Property to be Mined" means both the surface estates and mineral estates within the permit area and the area covered by underground workings.

"Public Building" means any structure that is owned or leased and principally used by a government agency for public business or meetings.

"Public Office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

"Public Park" means an area or portion of an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

"Public Road", for the purpose of part R645-103-200, R645-301-521.123, and R645-301-521.133 means a road (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; (c) for which there is substantial (more than incidental) public use; and (d) which meets road construction standards for other public roads of the same classification in the local jurisdiction.

"Publicly Owned Park" means a public park that is owned by a federal, state, or local governmental entity.

"Qualified Laboratory" means, for the purposes of R645-302-290, a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences, statement of results of test borings or core samplings under SOAP, or other services as specified at R645-302-299 and which meet the standards of R645-302-295.100.

"Rangeland" means land on which the natural potential

(climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

"Reasonably Available Spoil" means spoil and suitable coal mine waste material generated by the remining activity or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use, and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge Capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions taken to restore mined land as required by the R645 Rules to a postmining land use approved by the Division.

"Recurrence Interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in ten years.

"Reference Area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the Division. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse Pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semiliquid material.

"Remining" means conducting coal mining and reclamation operations which affect previously mined areas.

"Renewable Resource Lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands. For the purposes of R645-103, RENEWABLE RESOURCE LANDS means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

"Renewal of a Permit" means, for the purposes of R645-302-300, a decision by the Division to extend the time by which the permittee may complete mining within the boundaries of the original permit.

"Replacement of Water Supply" means, with respect to State-appropriated water supplies contaminated, diminished, or interrupted by coal mining and reclamation operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water

supply owner.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety Factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

"Secretary" means the Secretary of the Department of Interior or his or her representative.

"Sedimentation Pond" means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Self Bond" means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor, and made payable to the Division with or without separate surety.

"Significant Forest Cover" means an existing plant community consisting predominantly of trees and other woody vegetation. The Secretary of Agriculture will decide on a case-by-case basis whether the forest cover is significant within those national forests in Utah.

"Significant, Imminent Environmental Harm to Land, Air, or Water Resources" means (a) the environmental harm has an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life; (b) an environmental harm is imminent, if a condition, practice, or violation exists which (i) is causing such harm, or (ii) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under 40-10-22 of the Act, and (c) an environmental harm is significant if that harm is appreciable and not immediately repairable.

"Significant Recreational, Timber, Economic, or Other Values Incompatible With Coal Mining and Reclamation Operations" means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, coal mining and reclamation operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include (a) recreation, including hiking, boating, camping, skiing, or other related outdoor activities, (b) timber management and silviculture, (c) agriculture, aquaculture, or production of other natural, processed, or manufactured products which enter commerce, and (d) scenic, historic, archaeological, aesthetic, fish, wildlife, plants, or cultural interests.

"Siltation Structure" means, for the purposes of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763, a sedimentation pond, a series of sedimentation ponds or other treatment facilities.

"Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

"SOAP" means Small Operator Assistance Program.

"Soil Horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four major soil horizons are"

A HORIZON - The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

E HORIZON - The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

B HORIZON - The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

C HORIZON - The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil Survey" means a field and other investigations resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in R645-302-314.100.

"Spoil" means overburden that has been removed during coal mining and reclamation operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"State Program" means the program established by the state of Utah and approved by the Secretary of the Department of the Interior pursuant to the Federal Act and the Act to regulate coal mining and reclamation operations on non-Indian and non-federal lands within Utah, according to the Federal Act, the Act and the R645 Rules. Pursuant to the cooperative agreement between the state of Utah and the Office, the State Program applies to federal lands in accordance with the terms of the cooperative agreement.

"Steep Slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the Division after consideration of soil, climate, and other characteristics of a region or Utah.

"Subirrigation" means, with respect to ALLUVIAL VALLEY FLOORS, the supplying of water to plants from underneath or from a semisaturated or saturated subsurface zone where water is available for use by vegetation.

"Substantial Legal and Financial Commitments in a Coal Mining and Reclamation Operation" means, for the purposes of R645-103-300, significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example would be an existing mine not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

"Substantially Disturb" means, for purposes of COAL EXPLORATION, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than

250 tons of coal.

"Successor in Interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surety Bond" means an indemnity agreement in a sum certain payable to the Division, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in Utah.

"Surface Operations and Impacts Incident to an Underground Coal Mine" means all operations involved in or related to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air, or water resources of the area including all activities listed in 40-10-3(20) of the Act and the definition of underground mining activities appearing herein.

"SURFACE COAL MINING AND RECLAMATION ACTIVITIES" means those coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Suspended Solids or Nonfilterable Residue, Expressed as Milligrams Per Liter" means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulation for waste water and analyses (40 CFR Part 136).

"Tangible Net Worth" means net worth minus intangibles such as goodwill and rights to patents or royalties.

"Temporary Diversion" means a diversion of a stream, or overland flow, which is used during coal exploration or coal mining and reclamation operations and not approved by the Division to remain after reclamation as part of the approved postmining land use.

"Temporary Impoundment" means an impoundment used during coal mining and reclamation operations, but not approved by the Division to remain as part of the approved postmining land use.

"Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four major soil horizons.

"Toxic-Forming Materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

"Toxic Mine Drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or coal mining and reclamation operations which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

"Transfer, Assignment, or Sale of Permit Rights" means a change of a permittee.

"UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES" means coal mining and reclamation operations incident to the extraction of coal by underground methods including a combination of (a) underground extraction of coal or in situ processing, construction use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and (b) underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in

situ processing, and underground mining, hauling, storage, and blasting.

"Underground Development Waste" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

"Undeveloped Rangeland" means, for purposes of ALLUVIAL VALLEY FLOORS, lands where the use is not specifically controlled and managed.

"Unwarranted Failure to Comply" means the failure of the permittee to prevent the occurrence of any violation of the State Program or any permit condition due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care.

"Upland Areas" means, with respect to ALLUVIAL VALLEY FLOORS, those geomorphic features located outside the floodplain and terrace complex such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows, or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

"Valid Existing Rights" means a set of circumstances under which a person may, subject to regulatory authority approval, conduct coal mining and reclamation operations on lands where Subsection 40-10-24(4) of the Act and R645-103-224 would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of R645-103-224 and Subsection 40-10-24(4) of the Act. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Federal Act and the State Program.

(a) Property rights demonstration. Except as provided in paragraph (c) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of coal mining and reclamation operations intended. This right must exist at the time that the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. Applicable Utah statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no applicable Utah law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

(b) Except as provided in paragraph (c) of this definition, a person claiming valid existing rights also must demonstrate compliance with one of the following standards:

(i) Good faith/all permits standard. All permits and other authorizations required to conduct coal mining and reclamation operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. At a minimum, an application must have been submitted for any permit required under R645-201, R645-301 or R645-302; or

(ii) Needed for and adjacent standard. The land is needed for and immediately adjacent to a coal mining and reclamation operation for which all permits and other authorizations required to conduct coal mining and reclamation operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would

unfairly impact the viability of the operation as originally planned before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act when the Division approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the Division may consider factors such as:

(A) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act depends upon use of that land for coal mining and reclamation operations;

(B) The extent to which plans used to obtain financing for the operation before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act rely upon use of that land for coal mining and reclamation operations;

(C) The extent to which investments in the operation before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act rely upon use of that land for coal mining and reclamation operations;

(D) Whether the land lies within the area identified on the life-of-mine map submitted under R645-301-521.141 before the land came under the protection of R645-103-224.

(c) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by R645-103-224 or Subsection 40-10-24(4) of the Act must demonstrate that one or more of the following circumstances exist if the road is included within the definition of coal mining and reclamation operations:

(i) The road existed when the land upon which it is located came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act, and the person has a legal right to use the road for coal mining and reclamation operations;

(ii) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for coal mining and reclamation operations;

(iii) A valid permit for use or construction of a road in that location for coal mining and reclamation operations existed when the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act; or

(iv) Valid existing rights exist under paragraphs (a) and (b) of this definition.

"Valley Fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten degrees.

"Violation" when used in the context of the permit application information or permit eligibility requirements of Section 40-10-10(2) and Subsection 40-10-11(3) and related rules, means:

(a) A failure to comply with an applicable provision of a federal or state law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(b) A noncompliance for which the Division or the Office have provided one or more of the following types of notice:

(i) A notice of violation under R645-400-320;

(ii) A cessation order under R645-400-310;

(iii) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under R645-401 or R645-402;

(iv) A bill or demand letter pertaining to delinquent reclamation fees owed under 30 CFR 870, Abandoned Mine Reclamation Fund - Fee Collection and Coal Reporting; or

(v) A notice of bond forfeiture under R645-301-880.900, when:

(A) One or more violations upon which the forfeiture was based have not been abated or corrected;

(B) The amount forfeited and collected is insufficient for full reclamation under R645-301-880.931, the Division orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order; or

(C) The site is covered by an alternative bonding system approved under 30 CFR 800.11(e), that system requires reimbursement of any reclamation costs incurred by the system above those covered by any site-specific bond and the person has not complied with the reimbursement requirement and paid any associated penalties.

"Violation, Failure, or Refusal" means for the purposes of R645-402, (a) A violation of a condition of a permit issued under the State Program, or (b) A failure or refusal to comply with any order issued under UCA 40-10-22, or any order incorporated in a final decision issued under UCA 40-10-20(2) or R645-104-500.

"Violation Notice" means any written notification from a governmental entity of a violation of law, as specified in the definition in this section, whether by letter, memorandum, legal or administrative pleading, or other written communication.

"Water Supply", "State-appropriated Water", and "State-appropriated Water Supply" are all synonymous terms and mean, for the purposes of the R645 Rules, state appropriated water rights which are recognized by the Utah Constitution or Utah Code.

"Water Table" means the upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable zone.

"Willful or Willfully" means that a person acted (a) either intentionally, voluntarily, or consciously, and (b) with intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out an action or omission that constituted a violation, failure, or refusal.

R645-100-300. Responsibility.

310. The Division is responsible for the regulation of coal mining and reclamation operations and coal exploration under the approved State Program on non-federal and non-Indian lands in accordance with the procedures in the R645 Rules.

320. The Division, through a cooperative agreement, exercises certain authority relating to the regulation of coal mining and reclamation operations on federal lands in accordance with 30 CFR Part 745.

R645-100-400. Applicability.

410. Except as provided under R645-100-420, the R645 Rules apply to all coal exploration and coal mining and reclamation operations, except:

411. The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

412. The extraction of 250 tons of coal or less by a person conducting coal mining and reclamation operations. A person who intends to remove more than 250 tons is not exempted;

413. The extraction of coal as an incidental part of federal, state or local government-financed highway or other construction in accordance with R645-102.

414. The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16-2/3 percent of the mineral tonnage removed for commercial use or sale in accordance with R645-106; or

415. Coal exploration on lands subject to the requirements of 43 CFR Parts 3480-3487.

420. Existing Structure Exemption. Each structure used in connection with or to facilitate coal exploration or coal mining and reclamation operations will comply with the performance standards and design requirements of R645-301 and R645-302, except that:

421. An existing structure which meets the performance standards but does not meet the design requirements of R645-301 and R645-302 may be exempted from meeting those design requirements by the Division. The Division may grant this exemption only as part of the permit application process after obtaining the information required by R645-301-526.110 through R645-301-526.115.4 and after making the findings required by R645-300-130.

422. If the performance standard of the MC Rules (Interim Program Rules) is at least as stringent as the comparable performance standard of the R645 Rules, an existing structure which meets the performance standards of the MC Rules may be exempted by the Division from meeting the design requirements of the R645 Rules. The Division may grant this exemption only as part of the permit application process after obtaining the information required by R645-301-526.110 through R645-301-526.115.4 and after making the findings required by R645-300-130.

423. An existing structure which meets a performance standard of the MC Rules which is less stringent than the comparable performance standard in the R645 Rules will be modified or reconstructed to meet the design standard of the R645 Rules pursuant to a compliance plan approved by the Division only as part of the permit application as required in R645-301-526.110 through R645-301-526.115.4 and according to the findings required by R645-300-130.

424. An existing structure which does not meet the performance standards of the MC Rules and which the applicant proposes to use, in connection with or to facilitate the coal exploration or coal mining and reclamation operation, will be modified or reconstructed to meet the performance design standards of R645-301 and R645-302 prior to issuance of the permit.

430. The exemptions provided in paragraphs R645-100-421 and R645-100-422 will not apply to:

431. The requirements for existing and new coal mine waste disposal facilities; and

432. The requirements to restore the approximate original contour of the land.

440. Regulatory Determination of Exemption. The Division may, on its own initiative, and will, within a reasonable time of a request from any person who intends to conduct coal mining and reclamation operations, make a written determination whether the operation is exempt under R645-100-400. The Division will give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the Division will consider, any written information relevant to the determination. A person requesting that an activity be declared exempt will have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption, and relied upon the determination, will not be cited for violations which occurred prior to the date of the reversal.

450. Termination of Jurisdiction.

451. The Division may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed coal

mining and reclamation operation, or increment thereof, when:

451.100. The Division determines in writing that under the initial program all requirements imposed under the MC rules have been successfully completed; or

451.200. The Division determines in writing that under the permanent program all requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the Division has made a final decision in accordance with the State program to release the performance bond fully.

452. Following a termination under R645-100-451, the Division will reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to under R645-100-451 was based upon fraud, collusion, or misrepresentation of a material fact.

R645-100-500. Petition to Initiate Rulemaking.

Persons other than the Division or Board may petition to initiate rulemaking pursuant to the R641 Rules and the Utah Administrative Rulemaking Act, U.C.A. 63G-3-101, et seq.

R645-100-600. Notice of Citizen Suits.

A person who intends to initiate a civil action in his or her own behalf under 40-10-21 of the Act will give notice of intent to do so in accordance with R645-100-600.

610. Notice will be given by certified mail to the Director, if a complaint involves or relates to Utah.

620. Notice will be given by certified mail to the alleged violator, if the complaint alleges a violation of the Act or any rule, order, or permit issued under the Act.

630. Service of notice under R645-100-600 is complete upon mailing to the last known address of the person being notified.

640. A person giving notice regarding an alleged violation will state, to the extent known:

641. Sufficient information to identify the provision of the Act, rule, order, or permit allegedly violated;

642. The act or omission alleged to constitute a violation;

643. The name, address, and telephone number of the person or persons responsible for the alleged violation;

644. The date, time, and location of the alleged violation;

645. The name, address, and telephone number of the person giving notice; and

646. The name, address, and telephone number of legal counsel, if any, of the person giving notice.

650. A person giving notice of an alleged failure by the Director to perform a mandatory act or duty under the Act will state, to the extent known:

651. The provision of the Act containing the mandatory act or duty allegedly not performed;

652. Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;

653. The name, address, and telephone number of the person giving notice; and

654. The name, address, and telephone number of legal counsel, if any, of the person giving notice.

R645-100-700. Availability of Records.

710. Records required by the Act to be made available locally to the public will be retained at the Division office closest to the area involved.

720. Other nonconfidential records or documents in the possession of the Division may be requested from the Division.

730. Information received which is required to be held confidential by the terms of the Act will not be available for public inspection.

R645-100-800. Computation of Time.

810. Except as otherwise provided, computation of time under the R645 Rules is based on calendar days.

820. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or a legal holiday on which the Division is not open for business, in which event the period runs until the end of the next day which is not Saturday, Sunday, or a legal holiday.

830. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period or prescribed time is seven days or less.

KEY: reclamation, coal mines

May 23, 2012

Notice of Continuation September 6, 2016

40-10-1 et seq.

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-103. Areas Unsuitable for Coal Mining and Reclamation Operations.****R645-103-100. General.**

110. Scope. R645-103 establishes procedures for implementing the requirements of the Act for designating lands unsuitable for all or certain types of coal mining and reclamation operations, for terminating such designations, for identifying lands on which coal mining and reclamation operations are limited or prohibited under Section 40-10-24 of the Act and for implementing those limits and prohibitions.

120. Authority. The Board and Division are authorized, under Section 40-10-24, to establish a data base and inventory system and a petition process to designate any nonfederal and non-Indian land areas of Utah as unsuitable for all or certain types of coal mining and reclamation operations.

130. Responsibility.

131. The Board and Division will integrate as closely as possible decisions to designate lands as unsuitable for coal mining and reclamation operations with present and future land use planning and regulatory processes at the state and local levels;

132. The Division will use a process that allows any person having an interest which is or may be adversely affected by coal mining and reclamation operations on nonfederal and non-Indian lands to petition the Board to have an area designated as unsuitable for all or certain types of coal mining and reclamation operations, or to have a designation terminated;

133. The Division will prohibit or limit coal mining and reclamation operations on certain lands and in certain locations designated by Section 40-10-24 of the Act.

R645-103-200. Areas Designated by Act of Congress.

210. Scope. The rules in R645-103-200 establish the procedures to be used by the Division to determine whether a proposed coal mining and reclamation operation can be authorized in light of the mandatory prohibitions set forth in the Act and Federal Act.

220. Federal Lands. The authority to make determinations of unsuitability on federal lands is reserved to the Secretary pursuant to Section 523(a) of the Federal Act.

221. Valid Existing Rights (VER). VER determinations on federal lands will be performed in a manner consistent with the terms of a cooperative agreement between the Secretary and Utah pursuant to section 523(c) of the Federal Act.

222. VER determinations on nonfederal lands which affect adjacent federal lands will be performed in a manner consistent with the terms of the cooperative agreement referenced in R645-103-221.

223. On federal lands within the boundaries of a national forest the Division will be responsible for coordination with the Secretaries of Interior and Agriculture, as appropriate, to ensure that mining is permissible under 30 CFR 761.11(b) and Section 522(e)(2) of the Federal Act.

224. Coal mining and reclamation operations may not be conducted on the following lands unless there are VER, as determined under R645-103-231.100, or qualify for the exception for existing operations under R645-103-225:

224.100. Any lands within the boundaries of the National Park System; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1276(a), or study rivers or study river corridors established in any guidelines issued under that Act; or National Recreation Areas designated by Act of Congress;

224.200. Any Federal lands within a national forest. This prohibition does not apply if the Secretary finds that there are no significant recreational, timber, economic, or other values that

may be incompatible with surface coal mining operations, and: 224.210. Any surface operations and impacts will be incident to an underground coal mine; or

224.220. With respect to lands that do not have significant forest cover within national forests west of the 100th meridian, the Secretary of Agriculture has determined that surface mining is in compliance with the Federal Act, the Multiple-Use Sustained Yield Act of 1960, 16 U.S.C. 528-531; the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. 181 et seq.; and the National Forest Management Act of 1976, 16 U.S.C. 1600 et seq;

224.300. Any lands where the operation would adversely affect any publicly owned park or any place in the National Register of Historic Places. This prohibition does not apply if, as provided in R645-103-236, the Division and the Federal, State, or local agency with jurisdiction over the park or place jointly approve the operation;

224.400. Within 100 feet, measured horizontally, of the outside right-of-way line of any public road. This prohibition does not apply:

224.410. Where a mine access or haul road joins a public road, or

224.420. When, as provided in R645-103-234, the Division (or the appropriate public road authority designated by the Division) allows the public road to be relocated or closed, or the area within the protected zone to be affected by the coal mining and reclamation operation, after:

224.421. Providing public notice and opportunity for a public hearing; and

224.422. Finding in writing that the interests of the affected public and landowners will be protected;

224.500. Within 300 feet, measured horizontally, of any occupied dwelling. This prohibition does not apply when:

224.510. The owner of the dwelling has provided a written waiver consenting to coal mining and reclamation operations within the protected zone, as provided in R645-103-235; or

224.520. The part of the operation to be located closer than 300 feet to the dwelling is an access or haul road that connects with an existing public road on the side of the public road opposite the dwelling;

224.600. Within 300 feet, measured horizontally, of any public building, school, church, community or institutional building, or public park; or

224.700. Within 100 feet, measured horizontally, of a cemetery. This prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and regulations.

225. VER determinations for land are not required where an existing operation meets the requirements of 30 CFR 761.12.

230. Procedures.

231. Upon receipt of an administratively complete application for a permit to conduct coal mining and reclamation operations, or an administratively complete application for a revision of the boundaries of a permit to conduct coal mining and reclamation operations, the Division will review the application to determine whether the proposed coal mining and reclamation operation would be located on any lands protected under R645-103-224.

231.100. The Division will follow 30 CFR 761.16 for determining state/federal responsibility for determinations, establishing application requirements, evaluation procedures and decision-making criteria for VER determinations, providing for public participation and notification of affected parties, and establishing requirements for the availability of records.

232. The Division will reject any portion of the application that would locate coal mining and reclamation operations on land protected under R645-103-224 unless:

232.100. The site qualifies for the exception for existing operations under R645-103-225;

232.200. A person has VER for the land, as determined

under R645-103-231-100;

232.300. The applicant obtains a waiver or exception from the prohibitions of R645-103-224 in accordance with R645-103-237, R645-103-234, and R645-103-235; or

232.400. For lands protected by R645-103-224.300, both the Division and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with R645-103-236.

233. If the Division is unable to determine whether the proposed activities are located within the boundaries of any of the lands listed in R645-103-224.100 or within the specified distance from a structure or feature listed in R645-103-224.600 or R645-103-224.700, the Division must request that the federal, Utah, or local governmental agency with jurisdiction over the protected land, structure, or feature verify the location. The Division will transmit a copy of the relevant portions of the permit application to the appropriate federal, Utah, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. The Division, upon request by the appropriate agency, will grant an extension to the 30-day period of an additional 30 days. However, the Division's request for location verification must specify that the Division will not necessarily consider a response received after the 30-day period or the extended period granted. If no response is received within the 30-day period, or within the extended period granted, the Division may make the necessary determination based on the information it has available.

234. Procedures for relocating or closing a public road or waiving the prohibition on coal mining and reclamation operations within the buffer zone of a public road.

234.100. This section does not apply to:

234.110. Lands for which a person has VER, as determined under R645-103-231.100;

234.120. Lands within the scope of the exception for existing operations in R645-103-225; or

234.130. Access or haul roads that join a public road, as described in R645-103-224.410.

234.200. The applicant must obtain any necessary approvals from the authority with jurisdiction over the road if the applicant proposes to:

234.210. Relocate a public road;

234.220. Close a public road; or

234.230. Conduct coal mining and reclamation operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.

234.300. Before approving an action proposed under R645-103-234.200, the Division, or a public road authority that it designates, must determine that the interests of the public and affected landowners will be protected. Before making this determination, the Division must:

234.310. Provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation;

234.320. If a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality; and

234.330. Based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If a hearing was held, the Division must make this finding within 30 days after the hearing. If no hearing was held, the Division must make this finding within 30 days after the end of the public comment period.

235. Procedures for waiving the prohibition on coal mining and reclamation operations within the buffer zone of an occupied dwelling.

235.100. This section does not apply to:

235.110. Lands for which a person has VER, as determined under R645-103-231.100;

235.120. Lands within the scope of the exception for existing operations in R645-103-225; or

235.130. Access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in R645-103-224.520.

235.200. Where the proposed coal mining and reclamation operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit applicant will submit with the application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver will act as consent to coal mining and reclamation operations within a closer distance of the dwelling as specified.

235.300. Where the applicant for a permit has obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to conduct operations within 300 feet of such dwelling, a new waiver will not be required.

235.400. Where the applicant for a permit had obtained a valid waiver from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

235.500. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to Utah laws, or if coal mining and reclamation operations have entered the 300-foot zone before the date of purchase.

236. Where the Division determines that the proposed coal mining and reclamation operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the Division will transmit to the federal, Utah, or local agency with jurisdiction over the publicly owned park or National Register place, a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the activity, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The Division, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days, or the extended period granted, will constitute an approval of the proposed permit. A permit for the coal mining and reclamation operation will not be issued unless jointly approved by all agencies. The procedures for joint approval will not apply to lands for which a person has VER as determined under R645-103-231.100 and lands within the scope of the exception for existing operations in R645-103-225.

237. If the applicant intends to rely upon the exception provided in R645-103-224.200 to conduct coal mining and reclamation operations on federal lands within a national forest, the applicant must request that the Division obtain the Secretarial findings required by R645-103-224.200. The applicant may submit a request to the Division before preparing and submitting an application for a permit or boundary revision on Federal lands in national forests. The applicant must explain how the proposed operation would not damage the values listed in the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" in 30 CFR 761.5. The applicant must include a map and sufficient information about the nature of the proposed operation for the Secretary to make adequately documented findings. The Division may request that the permit applicant provide additional information that the Division determines is necessary in order to make the required findings. When a proposed coal mining and reclamation operation or proposed boundary revision for an existing coal mining and reclamation

operation includes federal lands within a national forest, the Division may not issue the permit or approve the boundary revision before the Secretary makes the findings required by R645-103-224.200.

238. If the Division determines that the proposed coal mining and reclamation operation is not prohibited under Section 40-10-24 of the Act and R645-103-200, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of coal mining and reclamation operations pursuant to R645-103-300 and R645-103-400.

239. A determination by the Division that a person holds or does not hold valid existing rights will be subject to administrative and judicial review under R645-300-200.

240. Interpretative Rule. As set forth in the interpretative rule found at 30 CFR 761.200, subsidence due to underground coal mining is not included in the definition of surface coal mining operations under Section 701(28) of the Federal Act and Subsection 40-10-3(20) of the Act and therefore is not prohibited in areas protected under Section 522(e) of the Federal Act.

R645-103-300. Utah Criteria for Designating Areas as Unsuitable for Coal Mining and Reclamation Operations.

310. Responsibility. The Division will use the criteria in R645-103-300 for the evaluation of each petition for the designation of nonfederal and non-Indian areas as unsuitable for coal mining and reclamation operations.

320. Criteria for Designating Land as Unsuitable.

321. Upon petition, an area will be designated as unsuitable for all or certain types of coal mining and reclamation operations if the Division determines that reclamation is not technologically and economically feasible under the State Program.

322. Upon petition, an area may be (but is not required to be) designated as unsuitable for certain types of coal mining and reclamation operations, if the operations will:

322.100. Be incompatible with existing state or local land use plans or programs;

322.200. Affect fragile or historic lands in which the activities could result in significant damage to important historic, cultural, scientific, or aesthetic values or natural systems;

322.300. Affect renewable resource lands in which the activities could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

322.400. Affect natural-hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

330. Land Exempt from Designation as Unsuitable for Coal Mining and Reclamation Operations. The requirements of R645-103-300 do not apply to:

331. Lands on which coal mining and reclamation operations were being conducted on August 3, 1977;

332. Lands covered by a permit issued under the Act; or

333. Lands where substantial legal and financial commitments in coal mining and reclamation operations were in existence prior to January 4, 1977.

340. Exploration on Land Designated as Unsuitable for Coal Mining and Reclamation Operations. Designation of any area as unsuitable for all or certain types of coal mining and reclamation operations pursuant to Section 40-10-24 of the Act or Section 522 of the Federal Act and R645-103-300 does not prohibit coal exploration in the area, if conducted in accordance with applicable provisions of the State Program or under the terms of a State/Federal cooperative agreement pursuant to section 523(c) of the Federal Act. Coal exploration on any

lands designated unsuitable for coal mining and reclamation operations must be approved by the Division under R645-200, to ensure that exploration does not interfere with any value for which the area has been designated unsuitable for coal mining and reclamation operations.

R645-103-400. Utah Processes for Designating Areas Unsuitable for Coal Mining and Reclamation Operations.

410. Scope and Authority.

411. R645-103-400 establishes the procedures and standards in the State Program for designating nonfederal and non-Indian lands in the state as unsuitable for all or certain types of coal mining and reclamation operations and for terminating such designations.

412. The Board has the authority to develop programs, procedures, and standards consistent with R645-103-400 to designate nonfederal and non-Indian lands unsuitable for all or certain types of coal mining and reclamation operations and for terminating such designations.

420. Petitions.

421. Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the Board to have an area designated as unsuitable for coal mining and reclamation operations, or to have an existing designation terminated. For the purpose of this action, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury-in-fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

422. Designation. A petitioner will file a petition using forms provided by the Division. The only information the petitioners must provide are:

422.100. The petitioner's name, address, telephone number, and notarized signature;

422.200. The legal description (i.e., township, range, and section number) of the area covered by the petition;

422.300. A description of how coal mining and reclamation operations in the area has affected or may adversely affect people, land, air, water, or other resources, including the petitioner's interests;

422.400. An identification of the petitioner's interest which is or may be adversely affected by coal mining and reclamation operations including a statement demonstrating how the petitioner satisfies the requirements of R645-103-421; and

422.500. U.S. Geological Survey 7-1/2-minute topographic map(s) or, if unavailable, 15-minute map(s) marked to show the location and size of the area encompassed by the designated petition;

422.600. Available information regarding:

422.610. Legal owners of record of the property (surface and mineral) being petitioned;

422.620. Holders of record of any leasehold interest in the property; and

422.630. Purchasers of record to the property under a real estate contract;

422.700. Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations, pursuant to specific criteria of R645-103-320, assuming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the petitioned area and petitioner's interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area.

422.800. A designation petition may contain, and the Division may request, in addition to required contents, the

following:

422.810. Information and data sources with regard to:
422.811. The potential coal resources of the area;
422.812. The demand for coal resources; or
422.813. The impact of the designation on the environment, economy, and supply for coal;
422.820. Such other information as may appropriately affect a determination on the petition;
422.900. Petitions will be mailed or delivered to: State of Utah, Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, P.O. Box 145801, Salt Lake City, Utah 84114-5801.

423. Termination of designations. A petitioner will file a petition for termination of a designation using forms provided by the Division. The only information the petitioner must provide are those items under R645-103-423.100 through R645-103-423.400, and R645-103-423.700 below. The petitioner may provide the information in the other sections if it is available, however, failure to provide the information will not jeopardize review of the petition for termination or constitute a reason for rejection of the petition.

423.100. The petitioner's name, address, telephone number, and notarized signature;

423.200. The legal description (i.e., township, range, and section number) and ownership of the area covered by the petition;

423.300. Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation;

423.400. U.S. Geological Survey 15-minute or 7-1/2-minute topographic map(s) marked to show the location and size of the geographic area covered by the petition (if available);

423.500. Available information about how reclamation is now technologically and economically feasible, if the designation was based on criteria found in R645-103-321; or

423.510. The nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in R645-103-322; or

423.520. The resources or conditions not being affected by coal mining and reclamation operations, or in the case of land use plans, not being incompatible with coal mining and reclamation operations during and after mining, if the designation was based on the criteria found in R645-103-322;

423.600. Available information regarding: legal owners of record of the property (surface and mineral) being petitioned; holders of record of any leasehold interest in the property; and purchasers of record of the property under a real estate contract;

423.700. Allegations of facts covering all lands for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and petitioner's interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases:

423.710. Reclamation now being technologically and economically feasible, if the designation was based on criteria found in R645-103-321; or

423.720. The nature or abundance of the protected resource or condition or other basis of the designation if the

designation was based on criteria found in R645-103-322; or
423.730. The resources or conditions not being affected by coal mining and reclamation operations, or in the case of land use plans, not being incompatible with coal mining and reclamation operations, if the designation was based on the criteria found in R645-103-322;

423.800. Petitions for termination of designations will be mailed or delivered to: State of Utah, Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, P.O. Box 145801, Salt Lake City, Utah 84114-5801.

430. Initial Processing, Record Keeping and Notification Requirements.

431. Initial Processing.

431.100. Unless a hearing or period of written comments is provided for under R645-103-432.200, the Division will, within 30 days of receipt of a petition, notify the petitioner by certified mail whether or not the petition is complete under R645-103-422 or R645-103-423. Complete, for a designation or termination petition, means that the information required under R645-103-422 and R645-103-423 has been provided.

431.200. The Division will determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the Division finds that there are not any identified coal resources in that area, it will return the petition to the petitioner with a statement of the findings.

431.300. If the Division determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirements of R645-103-421, it will return the petition to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit.

431.400. When considering a petition for an area which was previously and unsuccessfully proposed for designation, the Division will determine if the new petition presents significant new allegations of fact with evidence which tends to establish the allegations. If the petition does not contain such material, the Division may choose not to consider the petition and may return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

431.500. The Division will notify the person who submits a petition of any application for a permit received which includes any area covered by the petition.

431.600. The Division may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, the Division may issue a decision on a complete and accurate permit application and will inform the petitioner why the Division cannot consider the part of the petition pertaining to the proposed permit area.

432. Notification.

432.100. Within 15 days of receipt of a petition, the Division will notify the general public of the receipt of the petition by a newspaper advertisement placed in the locale of the area covered by the petition and in the newspaper providing broadest circulation in the region of the petitioned area. The Division will make copies of the petition available to the public and will provide copies of the petition to other interested governmental agencies, intervenors, persons with an ownership interest of record in the property, and other persons known to the Division to have an interest in the property. Proper notice to persons with an ownership interest of record in the property will comply with the requirements of applicable state law.

432.200. The Division may provide for a hearing or a period of written comments on completeness of petitions. If a hearing or comment period on completeness is provided, the

Division will inform interested governmental agencies, intervenors, persons with an ownership interest of record in the property, and other persons known to the Division to have an interest in the property of the opportunity to request to participate in such a hearing or provide written comments. Proper notice to persons with an ownership interest of record in the property will comply with the requirements of applicable Utah law. Notice of such a hearing will be made by a newspaper advertisement placed in the locale of the area covered by the petition and in the newspaper providing broadest circulation in the region of the petitioned area. The Division will, within 30 days of a hearing or close of period of written comments, notify the petitioner of such a hearing by certified mail. On the basis of Division review, as well as consideration of all comments, the Division will, within 30 days of the hearing or close of written comments, determine whether the petition is complete.

432.300. Within 15 days of the petition being determined complete, the Division will request submissions from the general public of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition and in the newspaper providing broadest circulation in the region of the petitioned area.

432.400. Until three days before the Division holds a hearing under R645-103-440, any person may intervene in the proceeding by filing allegations of fact describing how the designation determination directly affects the intervenor, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number.

433. Record keeping.

433.100. Beginning from the date a petition is filed, the Division will compile and maintain a record consisting of all relevant portions of the data base and all documents relating to the petition filed with or prepared by the Division.

433.200. The Division will make the record available to the public for inspection free of charge and for copying at reasonable cost during all normal hours at the main office of the Division.

433.300. The Division will also maintain information at or near the area in which the petitioned land is located and make this information available to the public for inspection free of charge and for copying at reasonable cost during all normal business hours. At a minimum, this information will include a copy of the petition.

440. Hearing Requirements.

441. Within ten months after receipt of a complete petition, the Board shall hold a public hearing unless petitioners and intervenors agree otherwise. If all petitioners and intervenors agree that a public hearing is not needed, the hearing need not be held. All hearings held under this paragraph will be held in the locality of the area covered by the petition. The Board may subpoena witnesses as necessary. The hearing may be conducted with cross-examination of expert witnesses only. A record of the hearing shall be made and preserved according to R641 Rules. No person shall bear the burden of proof or persuasion. All relevant parts of the data base and inventory system and all public comments received during the public comment period shall be included in the record and considered by the Board in its decision on the petition.

442. The Division will give notice of the date, time, and location of the hearing to:

442.100. Local, state, and federal agencies which may have an interest in the decision on the petition;

442.200. The petitioner and the intervenors; and

442.300. Any person with an ownership or other interest known to the Division in the areas covered by the petition.

443. Notice of the hearing will be sent by certified mail

and postmarked not less than 30 days before the scheduled date of the hearing.

444. The Division will notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for two consecutive weeks in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement will begin between four to five weeks before the scheduled date of the public hearing.

445. The Board may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

446. In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

450. Decision.

451. Prior to designating any land areas unsuitable for coal mining and reclamation operations, the Division will prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

452. The cost-benefit analysis, required by Section 40-10-24(1)(c) of the Act, is a part of the assessment of the impact of such designation on the economy required in the detailed statement. The analysis will not dictate the decision of the Board.

453. In reaching its decision, the Board will use:

453.100. The information contained in the data base and inventory system;

453.200. Information provided by other governmental agencies;

453.300. The detailed statement prepared under R645-103-451; and

453.400. Any other relevant information submitted during the comment period.

454. A final written decision will be issued by the Board, including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The Division will simultaneously send the decision by certified mail to the petitioner, every other party to the proceeding, and to the Office of Surface Mining.

455. The decision of the Board with respect to a petition, or the failure of the Division to act within the time limits set forth in R645-103-400, will be subject to judicial review by a court of competent jurisdiction in accordance with Section 40-10-30 of the Act.

460. Data Base and Inventory System Requirements.

461. The Division will develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

462. The Division will include in the system information relevant to the criteria in R645-103-320 including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Officer, and the Department of Environmental Quality - Division of Air Quality.

463. The Division will add to the data base and inventory system information:

463.100. On potential coal resources of Utah, demand for those resources, the environment, the economy, and the supply of coal sufficient to enable the Division to prepare the statements required by R645-103-451; and

463.200. That becomes available from petitions, publications, experiments, permit applications, coal mining and reclamation operations, and other sources.

470. Public Information. The Division will:

471. Make the information in the data base and inventory system developed under R645-103-460 available to the public

for inspection free of charge and for copying at reasonable cost, except that specific information relating to location of properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the Division determines that the disclosure of such information would create a risk of destruction or harm to such properties.

472. Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of coal mining and reclamation operations, or to have designations terminated and describe how the inventory and data base system can be used.

480. Division Responsibility for Implementation.

481. The Division will not issue permits which are inconsistent with designations made pursuant to R645-103-200, R645-103-300, or R645-103-400.

482. The Division will maintain a map, or other unified and cumulative record, of areas designated unsuitable for all or certain types of coal mining and reclamation operations.

483. The Division will make available to any person any information, within its control, regarding designations including mineral or elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.

KEY: reclamation, coal mines

July 28, 2010

40-10-1 et seq.

Notice of Continuation September 6, 2016

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-200. Coal Exploration: Introduction.****R645-200-100. Scope.**

110. The coal exploration rules, R645-200 through R645-203, apply to the Division and to any person who conducts or seeks to conduct coal exploration.

120. Coal Exploration Categories.

121. Coal Exploration Which is Subject to 43 CFR Parts 3480-3487. This category of coal exploration is conducted according to the procedures set forth in 43 CFR Parts 3480-3487.

122. Minor Coal Exploration. Coal exploration during which 250 tons or less of coal will be removed will require Division review of a Notice of Intention to Conduct Minor Coal Exploration under the requirements of R645-201-200. Exploration during which 250 tons or less of coal will be removed on lands designated as unsuitable for surface coal mining operations under R645-103 will be subject to the requirements of R645-201-300.

123. Major Coal Exploration. Coal exploration during which more than 250 tons of coal will be removed or which takes place on lands which are designated as unsuitable for surface coal mining operations under R645-103 will require Division approval and issuance of a Major Coal Exploration Permit under the requirements of R645-201-300.

R645-200-200. Responsibilities.

210. It is the responsibility of any person seeking to conduct coal exploration under the State Program to comply with the requirements of R645-200 through R645-203.

220. It is the responsibility of the Division to receive and review Notices of Intention to Conduct Minor Coal Exploration, to enforce the terms of each Notice, and to receive, review and approve or disapprove applications for Major Coal Exploration Permits. The Division will issue, condition, suspend, revoke and enforce Major Coal Exploration Permits under the State Program. The Division will review and respond to Notices of Intention to Conduct Minor Coal Exploration and initial applications for Major Coal Exploration Permits within 15 days of receipt.

230. The Division will coordinate review of Notices of intention to conduct Minor Coal Exploration and review, approval or disapproval of Major Coal Exploration Permit applications with other government agencies, as appropriate.

KEY: reclamation, coal mines

1994

40-10-1 et seq.

Notice of Continuation September 6, 2016

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-201. Coal Exploration: Requirements for Exploration Approval.****R645-201-100. Responsibilities for Coal Exploration Plan Review.**

110. Coal exploration plan review on lands which are not subject to 43 CFR Parts 3480 -3487 will be the responsibility of the Division.

120. On lands where the requirements of 43 CFR 3480-3487 apply, the review of coal exploration plans will be guided by the direction provided in these parts of the 43 CFR.

130. The Division will coordinate as appropriate its activities in reviewing coal exploration projects with other agencies with the objective of reducing duplication of agency and operator effort and at the same time, maximizing the effect of its protection of the state from the environmental effects of coal exploration activities.

R645-201-200. Notices of Intention to Conduct Minor Coal Exploration.

210. Notices of Intention to Conduct Minor Coal Exploration when 250 tons or less of coal will be removed will require Division review prior to conducting exploration except where exploration is planned to be conducted on lands designated unsuitable for surface coal mining operations under R645-103; exploration on these lands designated as unsuitable will be subject to the requirements of R645-201-300.

220. Notices of Intention to Conduct Minor Coal Exploration will include:

221. The name, address and telephone number of the applicant seeking to explore;

222. The name, address and telephone number of the applicant's representative who will be present at, and responsible for conducting the exploration operations;

223. A narrative and map describing the exploration area and indicating where exploration will occur;

224. A statement of the period of intended exploration; and

225. A description of the method of exploration to be used, the amount of coal to be removed and the practices that will be followed to protect the area from adverse impacts of the exploration activities and to reclaim the area in accordance with the applicable requirements of R645-202.

R645-201-300. Major Coal Exploration Permits.

310. Any person who intends to conduct coal exploration in which more than 250 tons of coal will be removed in the area to be explored or which will take place on lands designated as unsuitable for coal mining and reclamation operations under R645-103, will, prior to conducting the exploration, submit an application for a Major Coal Exploration Permit and obtain written approval from the Division.

320. Contents of Major Coal Exploration Permit Applications. Each application for a Major Coal Exploration Permit approval will contain, at a minimum, the following information:

321. The name, address, and telephone number of the applicant;

322. The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration; and

323. An exploration and reclamation operations plan, including:

323.100. A narrative description of the proposed exploration area, cross-referenced to the map required under R645-201-325, including information on surface topography; geology, surface water, and other physical features; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or

threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.); districts, sites, buildings, structures or objects listed on or eligible for listing on the National Register of Historic Places; known archeological resources located within the proposed exploration area; and other information which the Division may require regarding known or unknown historic or archeological resources;

323.200. A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

323.300. An estimated timetable for conducting and completing each phase of the exploration and reclamation;

323.400. A description of the measures to be used to comply with the applicable requirements of R645-202;

323.500. The estimated amount of coal to be removed and a description of the methods to be used to determine the amount removed; and

323.600. A statement of why more than 250 tons of coal are necessary for exploration.

324. The name and address of the owner(s) of record of the surface land and of the subsurface mineral estate of the area to be explored;

325. A map at a scale of 1:24,000 or larger, showing the areas of land to be substantially disturbed by the proposed exploration and reclamation. The map will specifically show existing underground openings, roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, cultural, topographic, and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

326. If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation; and

327. A detailed estimate of the cost of reclamation for the proposed exploration, with supporting calculations for the estimate. Estimates should be based on rates given in acceptable "cost, performance and escalation index" handbooks. The exploration reclamation estimate should include appropriate calculations and costs for:

327.100. Demolition;

327.200. Structural removal;

327.300. Backfilling and/or regrading;

327.400. Recontouring;

327.500. Seedbed preparation;

327.600. Seeding;

327.700. Mulching and/or fertilizing;

327.800. Contingency factor; and

327.900. Escalation factor.

328. For any lands listed in R645-103-224, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for coal mining and reclamation operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of R645-103-224, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of R645-103-224.

330. Public Notice and Comment for an application for a Major Coal Exploration Permit.

331. Completeness Determination. Within 30 days of

receipt of an application, excluding applicant response time, the Division will determine whether an application is administratively complete. The division will notify the applicant, in writing, upon determining the application to be administratively complete.

332. Public notice of the application will be provided as follows:

332.100. The applicant will publish once a week for four consecutive weeks, subsequent to the Division's completeness determination, a public notice of the filing of an administratively complete application with the Division in a newspaper of general circulation in the county of the proposed exploration area; and

332.200. The public notice will state the name and business address of the person seeking approval, the date of filing of the application, the Division address where written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration.

333. Public Comment. Any person with an interest which is or may be adversely affected will have the right to file written comments with the Division on the application within 30 days after the last date of publication.

340. Approval or Disapproval of an Application for a Major Coal Exploration Permit.

341. The Division will act upon an administratively complete application for a Major Coal Exploration Permit and any written comments within 60 days, weather permitting. The approval of a Major Coal Exploration Permit may be based only on a complete and accurate application.

342. The Division will approve a complete and accurate application for a Major Coal Exploration Permit filed in accordance with R645-201-300 if it finds, in writing, that the exploration and reclamation described in the application will:

342.100. Be conducted in accordance with R645-201-300, R645-202, and any other applicable provisions of the State Program;

342.200. Not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species;

342.300. Not adversely affect any cultural or historical resources listed on the National Register of Historic Places, pursuant to the National Historic Preservation Act, (16 U.S.C. Sec. 470 et seq.), unless the proposed exploration has been approved by both the Division and the agency with jurisdiction over the resources to be affected;

342.400. Terms of approval issued by the Division will contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with the Act, R645-201-300, R645-202, and any other applicable provisions of the State Program; and

342.500. With respect to exploration activities on any lands protected under R645-103-224, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for coal mining and reclamation operations. Before making this finding, the Division must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of R645-103-224, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of R645-103-224, to comment on whether the finding is appropriate.

350. Notice and Hearing on an Application for a Major Coal Exploration Permit.

351. The Division will notify the applicant and the appropriate local government officials, and other commenters,

in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant will include a statement of the reason, for disapproval. The Division will provide public notice of approval or disapproval of each application, by publication in a newspaper of general circulation in the general vicinity of the proposed operations.

352. Any person with interests which are or may be adversely affected by a decision of the Division pursuant to R645-201-351, will have the opportunity for administrative and judicial review as are set forth in R645-300-200.

R645-201-400. Requirements for Commercial Sale.

Any person who extracts coal for commercial sale or commercial use during any coal exploration will obtain a coal mining and reclamation operations permit for those operations from the Division under R645-300 through R645-303 unless that coal extraction is exempted by R645-100-400.

410. With the prior written approval of the Division, no permit to conduct coal mining and reclamation operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. An application will be filed with the Division to obtain this written approval.

420. The application referred to under R645-201-410 is required to demonstrate that the coal testing is needed for the development of the coal mining and reclamation operation which will be the subject of a permit application to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal.

430. The application to mine coal for testing purposes will contain:

431. The name of the testing firm and the locations at which the coal will be tested.

432. If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

432.100. The specific reason for the test, including why the coal may differ from the intended user's other coal supplies so as to require testing;

432.200. The amount of coal necessary for the test(s) and why a smaller amount will not suffice; and

432.300. A description of the specific tests that will be conducted.

433. Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

434. An explanation as to why other means of exploration, such as core drilling are not adequate to determine the quality of the coal and/or the feasibility of developing a coal mining and reclamation operation.

KEY: reclamation, coal mines

July 28, 2010

Notice of Continuation September 6, 2016

40-10-1 et seq.

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-202. Coal Exploration: Compliance Duties.****R645-202-100. Required Documents.**

Each person who conducts coal exploration which substantially disturbs the natural land surface will, while in the exploration area, have available a copy of the Notice of Intention to Conduct Minor Coal Exploration or Approved Major Coal Exploration Permit for review by an authorized representative of the Division upon request.

R645-202-200. Performance Standards.

210. All coal exploration and reclamation operations which substantially disturb the natural land surface or which remove more than 250 tons of coal will be conducted in accordance with the coal exploration requirements of the State Program, and any conditions on approval for exploration and reclamation imposed by the Division.

220. Any person who conducts any coal exploration in violation of the State Program will be subject to the provisions of 40-10-20 of the Act and the applicable inspection and enforcement provisions of the R645 Rules.

230. Operational Standards.

231. Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) will not be disturbed during coal exploration.

232. All roads or other transportation facilities used for coal exploration will comply with the applicable provisions of R645-301-358, R645-301-512.250, R645-301-526.200, R645-301-527.100, R645-301-527.230, R645-301-527.240, R645-301-534.100 through R645-301-534.300, R645-301-542.600, R645-301-742.410 through R645-301-742.420, R645-301-752.200, and R645-301-762.

233. Topsoil will be separately removed, stored, and redistributed on areas disturbed by coal exploration activities as necessary to assure successful revegetation or as required by the Division.

234. Diversions of overland flows and ephemeral, perennial, or intermittent streams will be made in accordance with R645-301-742.300.

235. Coal exploration will be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with R645-301-356.300 through R645-301-356.400, R645-301-512.240, R645-301-513.200, R645-301-514.300, R645-301-515.200, R645-301-532, R645-301-533.100 through R645-301-533.600, R645-301-731.100 through R645-301-731.522, R645-301-731.800, R645-301-733.220 through R645-301-733.240, R645-301-742.100 through 742.125, R645-301-742.200 through R645-301-742.300, R645-301-743, R645-301-744.100 and 744.200, R645-301-751, R645-301-752, R645-301-753, and R645-301-763. The Division may specify additional measures which will be adopted by the person engaged in coal exploration.

236. Acid- or toxic-forming materials will be handled and disposed of in accordance with R645-301-731.110, R645-301-731.300, and R645-301-553.260. The Division may specify additional measures which will be adopted by the person engaged in coal exploration.

240. Reclamation Standards.

241. If excavations, artificially flat areas, or embankments are created during exploration, these areas will be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

242. All areas disturbed by coal exploration activities will be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. Revegetation will be accomplished in accordance with the following:

242.100. All areas disturbed by coal exploration activities will be seeded or planted to the same seasonal variety native to the areas disturbed. If the land use of the exploration area is intensive agriculture, planting of the crops normally grown will meet the requirements of R645-202-242.100; and

242.200. The vegetative cover will be capable of stabilizing the soil surface from erosion.

243. Each exploration hole, borehole, well, or other exposed underground opening created during exploration will be reclaimed in accordance with R645-301-529, R645-301-551, R645-301-631, R645-301-738, and R645-301-765.

244. All facilities and equipment will be promptly removed from the exploration area when they are no longer needed for exploration, except for those facilities and equipment that the Division determines may remain to:

244.100. Provide additional environmental data;

244.200. Reduce or control the on-site and off-site effects of the exploration activities; or

244.300. Facilitate future coal mining and reclamation operations by the person conducting the exploration.

**KEY: reclamation, coal mines
1994**

40-10-1 et seq.

Notice of Continuation September 6, 2016

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-203. Coal Exploration: Public Availability of Information.****R645-203-100. Public Records.**

Except as provided in R645-203-200 all information submitted to the Division under R645-200 through R645-202 will be made available for public inspection and copying at the Division.

R645-203-200. Confidentiality.

The Division will not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

210. The Division will keep information confidential if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

220. Information requested to be held as confidential under R645-203-200 will not be made publicly available until after notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information.

KEY: reclamation, coal mines

1995

40-10-1 et seq.

Notice of Continuation September 6, 2016

**R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-300. Coal Mine Permitting: Administrative
Procedures.**

**R645-300-100. Review, Public Participation, and Approval
or Disapproval of Permit Applications and Permit Terms
and Conditions.**

The rules in R645-300-100 present the procedures to carry out the entitled activities.

110. Introduction.

111. Objectives. The objectives of R645-300-100 are to:

111.100. Provide for broad and effective public participation in the review of applications and the issuance or denial of permits;

111.200. Ensure prompt and effective review of each permit application by the Division; and

111.300. Provide the requirements for the terms and conditions of permits issued and the criteria for approval or denial of a permit.

112. Responsibilities.

112.100. The Division has the responsibility to approve or disapprove permits under the approved State Program.

112.200. The Division and persons applying for permits under the State Program will involve the public throughout the permit process of the State Program.

112.300. The Division will assure implementation of the requirements of R645-300 under the State Program.

112.400. All persons who engage in and carry out any coal mining and reclamation operations will first obtain a permit from the Division. The applicant will provide all information in an administratively complete application for review by the Division in accordance with R645-300 and the State Program.

112.500. Any permittee seeking to renew a permit for coal mining and reclamation operations solely for the purpose of reclamation and not for the further extraction, processing, or handling of the coal resource will follow the procedures set forth in R645-303-232.500.

113. Coordination with requirements under other laws. The Division will provide for the coordination of review and issuance of permits for coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.); The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); the Bald Eagle Protection Act, as amended 16 U.S.C. 668a); and where federal and Indian lands covered by that Act are involved, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.); and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.).

120. Public Participation in Permit Processing.

121. Filing and Public Notice.

121.100. Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under R645-303-220 or renewal of a permit under R645-303-230 will place an advertisement in a local newspaper of general circulation in the locality of the proposed coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper will be submitted to the Division. The advertisement will contain, at a minimum, the following:

121.110. The name and business address of the applicant;

121.120. A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it will indicate the north direction;

121.130. The location where a copy of the application is available for public inspection;

121.140. The name and address of the Division, where written comments, objections, or requests for informal conferences on the application may be submitted under R645-300-122 and R645-300-123;

121.150. If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with R645-103-234; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing; and

121.160. If the application includes a request for an experimental practice under R645-302-210, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

121.200. The applicant will make an application for a permit, significant revision under R645-303-220, or renewal of a permit under R645-303-230 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the coal mining and reclamation operation is proposed to occur, or an accessible public office approved by the Division. This copy of the application need not include confidential information exempt from disclosure under R645-300-124. The application required by R645-300-121 will be filed by the first date of newspaper advertisement of the application. The applicant will file any changes to the application with the public office at the same time the change is submitted to the Division.

121.300. Upon receipt of an administratively complete application for a permit, a significant revision to a permit under R645-303-220, or a renewal of a permit under R645-303-230, the Division will issue written notification indicating the applicant's intention to conduct coal mining and reclamation operations within the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification will be sent to:

121.310. Local governmental agencies with jurisdiction over or an interest in the area of the proposed coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

121.320. All federal or state governmental agencies with authority to issue permits and licenses applicable to the proposed coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with the State Program, Section 503(a)(6) or Section 504(h) of P.L. 95-87, or 30 CFR 733.12; or those agencies with an interest in the proposed coal mining and reclamation operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, state and federal fish and wildlife agencies, and Utah State Historic Preservation Officer.

122. Comments and Objections on Permit Application.

122.100. Within 30 days of the last newspaper publication, written comments or objections to an application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230 may be submitted to the Division by public entities notified under R645-300-121.300 with respect to the effects of the proposed coal mining and reclamation operation on the environment within their areas of responsibility.

122.200. Written objections to an application for a permit,

significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230 may be submitted to the Division by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any federal, state, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by R645-300-121.

122.300. The Division will upon receipt of such written comments or objections:

122.310. Transmit a copy of the comments or objections to the applicants; and

122.320. File a copy for public inspection at the Division.

123. Informal Conferences.

123.100. Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or a head of a federal, state, or local government agency, may request in writing that the Division hold an informal conference on the application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230. The request will:

123.110. Briefly summarize the issues to be raised by the requestor at the conference;

123.120. State whether the requestor desires to have the conference conducted in the locality of the proposed coal mining and reclamation operation; and

123.130. Be filed with the Division no later than 30 days after the last publication of the newspaper advertisement required under R645-300-121.

123.200. Except as provided in R645-300-123.300, if an informal conference is requested in accordance with R645-300-123.100, the Division will hold an informal conference within 30 days following the receipt of the request. The informal conference will be conducted as follows:

123.210. If requested under R645-300-123.120, it will be held in the locality of the proposed coal mining and reclamation operation.

123.220. The date, time, and location of the informal conference will be sent to the applicant and other parties to the conference and advertised by the Division in a newspaper of general circulation in the locality of the proposed coal mining and reclamation operation at least two weeks before the scheduled conference.

123.230. If requested in writing by a conference requestor at a reasonable time before the conference, the Division may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

123.240. The requirements of the Procedural Rules of the Board of Oil, Gas and Mining (R641 Rules) will apply to the conduct of the informal conference. The conference will be conducted by a representative of the Division, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record will be made of the conference, unless waived by all the parties. The record will be maintained and will be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to R645-301-800.

123.300. If all parties requesting the informal conference withdrew their request before the conference is held, the informal conference may be canceled.

123.400. An informal conference held in accordance with R645-300-123 may be used by the Division as the public hearing required under R645-103-234 on proposed relocation or closing of public roads.

124. Public Availability of Permit Applications.

124.100. General Availability. Except as provided in

R645-300-124.200 and R645-300-124.300, all applications for permits; permit changes; permit renewals; and transfers, assignments or sales of permit rights on file with the Division will be made available, at reasonable times, for public inspection and copying.

124.200. Limited Availability. Except as provided in R645-300-124.310, information pertaining to coal seams, test borings, core samplings, or soil samples in an application will be made available to any person with an interest which is or may be adversely affected. Information subject to R645-300-124 will be made available to the public when such information is required to be on public file pursuant to Utah law.

124.300. Confidentiality. The Division will provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which will be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to:

124.310. Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment.

124.320. Information required under section 40-10-10 of the Act that is authorized by that section to be held confidential and is not on public file pursuant to Utah law and that the applicant has requested in writing to be held confidential; and

124.330. Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (P. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

130. Review of Permit Application.

131. General.

131.100. The Division will review the application for a permit, permit change, or permit renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the Division, either granting, requiring modification of, or denying the application. If an informal conference is held under R645-300-123 the decision will be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under R645-300-210.

131.110. Application review will not exceed the following time periods:

131.111. Permit change applications.

131.111.1. Significant revision - 120 days.

131.111.2. Amendments - 60 days.

131.112. Permit renewal - 120 days.

131.113. New underground mine applications - One year.

131.114. New surface mine applications - One year.

131.120. Time will be counted as cumulative days of Division review and will not include operator response time or time delays attributed to informal or formal conferences or Board hearings.

131.200. The applicant for a permit or permit change will have the burden of establishing that their application is in compliance with all the requirements of the State Program.

131.300. If, after review of the application for a permit, permit change, or permit renewal, additional information is required, the Division will issue a written finding providing justification as to why the additional information is necessary to satisfy the requirements of the R645 Rules and issue a written decision requiring the submission of the information.

132. Review of Compliance and Entry of Information into the AVS. Based upon an administratively complete application, the Division will undertake the reviews required by R645-300-132 before making a permit eligibility determination. The Division will enter into AVS the information included in the

application required by R645-301-112 and the forfeitures, unabated or uncorrected violations, cessation orders or civil penalties listed as required by R645-301-113. The Division must update the AVS with the information required and provided under R645-301-112 and R645-301-113 upon verification of any additional information submitted or discovered during the permit application process.

132.100. The Division will review information provided in accordance with R645-301-112.340 through R645-301-112.420 and R645-301-113 on violations and permit history, state and federal failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued under Section 518 of the Federal Act, SMCRA-derived laws of other states, and Section 40-10-20 of the Act, bond forfeitures where violations on which the forfeitures are based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of the Act, derivative laws of other states and federal air and water protection laws, rules and regulations incurred at any coal mining and reclamation operations connected with the applicant, the operator, the operations the applicant owns or controls, and the operations the operator owns or controls.

132.100.1. In addition, the Division will review ownership information provided under R645-301-112 and any other information available to review the applicant's and applicant's operator's organizational structure and ownership or control relationships; and the Division will request a narrative report from the AVS.

132.100.2. The Division will determine if the applicant or operator have previous mining experience, and if none, the Division may conduct a review under R645-300-185.300 or authorize the AVS office to review to determine if someone else with mining experience controls the mining operation.

132.100.3. Based upon the violations, permit history, ownership reviews and the AVS report, the Division will then make a finding that neither the applicant, the operator, operations the applicant owns or controls or operations the operator owns or controls, are facing permanent permit ineligibility under R645-300-183 or currently in violation of any law, rule, or regulation referred to in R645-300-132. If such a finding cannot be made, the Division will require the applicant, before issuance of the permit, to either:

132.110. Submit to the Division proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

132.120. Establish for the Division that the applicant or operator, or any person owned by the applicant or operator, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under R645-300-220 either denies a stay applied for in the appeal or affirms the violation, then the applicant will within 30 days submit the proof required under R645-300-132.110; or

132.121. The applicant or operator is pursuing a good faith challenge to all pertinent ownership or control listings or findings under R645-300-132.150 or an administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

132.150. AVS ownership and control information may be challenged by the owner or controller of an entire coal mining and reclamation operation, or any portion or aspect thereof or by an applicant or permittee affected by an ownership or control listing or finding.

132.150.1. To challenge an ownership or control listing or finding, a person must submit a written explanation of the basis for the challenge, along with any evidence or explanatory materials in accordance with R645-300-132.150.7 to the

regulatory authority, as identified in the following statement. If the challenge concerns a pending state or federal permit application, then the person must submit written explanation to the regulatory authority with the jurisdiction over the application. If the person is not currently seeking a permit, then the written explanation must be submitted to the regulatory authority with jurisdiction over the coal mining and reclamation operation.

132.150.2. The provisions of this subsection and of R645-300-132.150.7 through R645-300-132.150.9 apply only to challenges to ownership or control listings or findings. A person may not use these provisions to challenge liability or responsibility under any other provision of the Act or its implementing rules.

132.150.3. When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit must consult the regulatory authority with jurisdiction over the violation and the AVS Office to obtain additional information.

132.150.4. A regulatory authority responsible for deciding a challenge under R645-300-132.150.1 may request an investigation by the AVS Office.

132.150.5. At any time a person listed in AVS as an owner or controller of a coal mining and reclamation operation may request an informal explanation from the AVS Office as to the reason they are shown in AVS in an ownership or control capacity. The AVS Office will provide a response within 14 days, describing why the person is listed in AVS.

132.150.6. A challenge to the listing of ownership or control, or a finding of ownership or control made under R645-300-185.300 through R645-300-185.700 must prove by a preponderance of the evidence that the person does not own or control the entire operation or relevant portion or aspect thereof, or did not own or control the entire operation or relevant portion or aspect thereof during the relevant time period.

132.150.7. In meeting the burden of proof, the person must present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority, such as, but not limited to: notarized affidavits containing specific facts concerning the duties performed for an operation, the beginning and ending dates of ownership and control of the operation, and the nature and details of any transaction creating or severing the person's ownership or control of the operation; certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records; certified copies of documents filed with or issued by any state, municipal, or federal governmental agency. The materials presented in connection with the challenge will become part of the permit file, an investigation file, or another public file. If requested, the Division will hold as confidential any information submitted under this paragraph which is not required to be made available to the public under R645-100-700 and R645-300-124.

132.150.8. The Division will review and investigate the evidence and explanatory materials submitted under R645-300-132.150.1 within 60 days of receipt, along with any other reasonably available information bearing on the challenge, and issue a written decision to the person presenting the challenge. The decision must state whether the person owns or controls the relevant coal mining and reclamation operation, or owned or controlled the operation, during the relevant time period.

132.150.9. The Division will provide the person with a copy of the decision by either certified mail, return receipt requested, or any means consistent with the rules governing service of a summons and complaint under R641. Service of the decision is complete upon delivery and is not incomplete if you refuse to accept delivery. The Division will post all decisions made under this subsection on AVS.

132.150.10. Any person who receives a written decision

under R645-300-132.150.9, and who wishes to appeal that decision, must exhaust administrative remedies under the procedures at R645-300-210, before seeking judicial review.

132.150.11. Following the Division's decision or any decision by a reviewing administrative or judicial tribunal, the Division must review the information in AVS to determine if it is consistent with the decision. If it is not, the Division must promptly revise the information in AVS to reflect the decision.

132.200. Any permit that is issued on the basis of proof submitted under R645-300-132.110 or pending the outcome of an appeal described in R645-300-132.120 will be provisionally issued.

132.300. If the Division makes a finding that the applicant, or anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, the application will not be granted. Before such a finding becomes final, the applicant or operator will be afforded an opportunity for an adjudicatory hearing on the determination as provided for in R645-300-210.

132.400. Permit Eligibility Determination. Based on the reviews required under R645-301-132.100, the Division will determine whether the applicant is eligible for a permit under Subsection 40-10-11(3)(c) of the Act.

132.410. Except as provided in R645-300-132.500 and R645-300-132.200, the applicant is not eligible for a permit if the Division finds any coal mining and reclamation operation that:

132.410.1. The applicant directly owns or controls has an unabated or uncorrected violation; or

132.410.2. The applicant or the applicant's operator indirectly control has an unabated or uncorrected violation and the applicant's or the applicant's operator's control was established or the violation was cited after November 2, 1988.

132.420. The Division will not issue a permit if the applicant or the applicant's operator are permanently ineligible to receive a permit under R645-300-183.

132.430. After the Division approves a permit under R645-300-133, the Division will not issue the permit until the applicant complies with the information update and certification requirement of R645-301-112.900. After the applicant completes the requirements of R645-301-112.900, the Division will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect the applicant's permit eligibility under R645-301-132.410 and R645-301-132.420. The Division will request this report no more than five business days before permit issuance under R645-300-150.

132.440. If the applicant is ineligible for a permit under R645-300-132.400, the Division will send the applicant written notification of the decision. The notice will explain why the applicant is ineligible and include notice of the applicant's appeal rights under R645-300-200.

132.500. Unanticipated events or conditions at remining sites.

132.510. The applicant is eligible for a permit under R645-300-132.400 if an unabated violation:

132.510.1. Occurred after October 24, 1992; and

132.510.2. Resulted from an unanticipated event or condition at a coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit.

132.520. For permits issued under R645-302-240, an event or condition is presumed to be unanticipated for the purpose of R645-300-132.500 if it:

132.520.1. Arose after permit issuance;

132.520.2. Was related to prior mining; and

132.520.3. Was not identified in the permit application.

133. Written Findings for Permit Application Approval. No permit application or application for a significant revision of a permit will be approved unless the application affirmatively demonstrates and the Division finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

133.100. The application is complete and accurate and the applicant has complied with all the requirements of the Federal Act and the State Program;

133.200. The proposed permit area is:

133.210. Not within an area under study or administrative proceedings under a petition, filed pursuant to R645-103-400 or 30 CFR 769, to have an area designated as unsuitable for coal mining and reclamation operations, unless the applicant demonstrates that before January 4, 1977, substantial legal and financial commitments were made in relation to the operation covered by the permit application; or

133.220. Not within an area designated as unsuitable for coal mining and reclamation operations pursuant to R645-103-300 and R645-103-400 or 30 CFR 769 or within an area subject to the prohibitions of R645-103-224;

133.300. For coal mining and reclamation operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Division the documentation required under R645-301-114.200;

133.400. The Division has made an assessment of the probable cumulative impacts of all anticipated coal mining and reclamation operations on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

133.500. The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

133.600. The Division has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Division has determined that no additional protection measures are necessary; and

133.700. The applicant has:

133.710. Demonstrated that reclamation as required by the Federal Act and the State Program can be accomplished under the reclamation plan contained in the permit application.

133.720. Demonstrated that any existing structure will comply with the applicable performance standards of R645-301 and R645-302.

133.730. Paid all reclamation fees from previous and existing coal mining and reclamation operations as required by 30 CFR Part 870.

133.740. Satisfied the applicable requirements of R645-302.

133.750. If applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of R645-301-353.400.

133.800. For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of R645-301-553.500, the site of the operation is a previously mined area as defined in R645-100-200.

133.900. For permits to be issued for proposed remining operations as defined in R645-100-200 and reclaimed in

accordance with R645-301-553, the permit application must contain the following information:

133.910. Lands eligible for re-mining;

133.920. An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

133.930. Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the State Program can be accomplished.

133.1000. The applicant is eligible to receive a permit, based on the reviews under R645-300-131 and R645-300-132.

134. Performance Bond Submittal. If the Division decides to approve the application, it will require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of R645-301-800.

140. Permit Conditions. Each permit issued by the Division will be subject to the following conditions:

141. The permittee will conduct coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to R645-301-800.

142. The permittee will conduct all coal mining and reclamation operations only as described in the approved application, except to the extent that the Division otherwise directs in the permit.

143. The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.

144. Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee will allow the authorized representatives of the Division to:

144.100. Have the right of entry provided for in R645-400-110 and R645-400-220.

144.200. Be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-100 and R645-400-200 when the inspection is in response to an alleged violation reported to the Division by the private person.

145. The permittee will take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

145.100. Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

145.200. Immediate implementation of measures necessary to comply; and

145.300. Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

146. As applicable, the permittee will comply with R645-301 and R645-302 for compliance, modification, or abandonment of existing structures.

147. The operator will pay all reclamation fees required by 30 CFR Part 870 for coal produced under the permit, for sale, transfer or use.

148. Within 30 days after a cessation order is issued under R645-400-310, except where a stay of the cessation order is granted and remains in effect, the permittee will either submit the following information current to when the order was issued or inform the Division in writing that there has been no change since the immediately preceding submittal of such information:

148.100. Within 60 days of any addition, departure, or change in position of any person identified in R645-301-112.300, the applicant must provide the information required

under R645-301-112.310 through R645-301-112.330 and the date of any departure.

148.200. If not previously submitted, the information required from a permit applicant by R645-301-112.300.

150. Permit Issuance and Right of Renewal.

151. Decision. If the application is approved, the permit will be issued upon submittal of a performance bond in accordance with R645-301-800. If the application is disapproved, specific reasons therefore will be set forth in the notification required by R645-300-152.

152. Notification. The Division will issue written notification of the decision to the following persons and entities:

152.100. The applicant, each person who files comments or objections to the permit application, and each party to an informal conference;

152.200. The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land; and

152.300. The Office.

153. Permit Term. Each permit will be issued for a fixed term of five years or less, unless the requirements of R645-301-116 are met.

154. Right of Renewal. Permit application approval will apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with R645-300-151 will carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with R645-303-230.

155. Initiation of Operations.

155.100. A permit will terminate if the permittee has not begun the coal mining and reclamation operation covered by the permit within three years of the issuance of the permit.

155.200. The Division may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if:

155.210. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

155.220. There are conditions beyond the control and without the fault or negligence of the permittee.

155.300. With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee will be deemed to have commenced coal mining and reclamation operations at the time that the construction of the synthetic fuel or generating facility is initiated.

155.400. Extensions of time granted by the Division under R645-300-155 will be specifically set forth in the permit, and notice of the extension will be made public by the Division.

160. Improvidently Issued Permits: Review Procedures.

161. Permit review. When the Division has reason to believe that it improvidently issued a coal mining and reclamation permit it will review the circumstances under which the permit was issued, and make a preliminary finding using the criteria in R645-300-162. Where the Division finds that the permit was improvidently issued, it shall comply with R645-300-163.

161.100. The Division will make a preliminary finding that a permit was improvidently issued if, under the permit eligibility criteria of R645-300-132, the permit should not have been issued because the permittee or operator owned or controlled a coal mining and reclamation operation with an unabated or uncorrected violation; and

161.110. The permittee or operator continues to own or control the operation with the unabated or uncorrected violation; and

161.120. The violation remains unabated or uncorrected; and

161.130. The violation would cause the permittee or operator to be ineligible under the permit eligibility criteria of R645-300-132.

161.200. The Division will serve the permittee with a written notice of the preliminary finding which are based on evidence sufficient to establish a prima facie case that the permit was improvidently issued.

161.300. Within 30 days of receiving the written notice of preliminary finding, the permittee may challenge the preliminary finding, under the provisions of R645-300-162 or R645-300-132.150, by providing the Division with evidence as to why the permit was not improvidently issued under the criteria in R645-300-162.

162. Review criteria. The Division will make a preliminary finding that a coal mining and reclamation permit was improvidently issued if:

162.100. Under the violations review criteria of the regulatory program at the time the permit was issued;

162.110. The Division should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

162.120. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

162.200. The violation, penalty or fee;

162.210. Remains unabated or delinquent; and

162.220. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

162.300. The permittee or operator continues to own or control the operation with the unabated or uncorrected violation; the violation remains unabated; and the violation would cause the operator or permittee to be ineligible under the permit eligibility criteria of R645-300-132; or where the ownership or control link was severed the permittee continues to be responsible for the violation, penalty or fee.

162.310. In the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review referenced in R645-300-132.121 affirms the validity of the violation or the ownership or control listing or finding; or

162.320. The initial judicial review decision referenced in R645-300-132.150 affirms the validity of the violation or the ownership or control listing or finding.

163. Remedial Measures.

When the Division, under R645-300-162 finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued it will use one or more of the following remedial measures:

163.100. Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

163.200. Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

163.300. Suspend the permit until the violation is abated or the penalty or fee is paid; or

163.400. Rescind the permit under R645-300-164.

164. Improvidently Issued Permits: Rescission procedures. When the Division under R645-300-163 elects to rescind an improvidently issued permit or provisionally issued permit under R645-300-132.200, it will post the notice at the Division office closest to the permit area and serve on the permittee a written notice of proposed suspension and rescission which includes the reasons for the finding of the regulatory

authority under R645-300-162 and states that:

164.100. Automatic suspension and rescissions. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee obtains temporary relief under the appeal rights of R645-300-210 or if on appeal, the permittee submits proof, and the regulatory authority finds, that;

164.110. The finding of the Division under R645-300-162 was erroneous;

164.120. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

164.130. The violation, penalty or fee is the subject of a good faith appeal, unless there is an initial judicial decision affirming the violation and that decision remains in force, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency;

164.140. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee; or

164.150. The permittee is pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding under R645-300-132.150, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

164.200. Cessation of operations. After permit suspension or rescission, the permittee shall cease all coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the Division.

164.300. Right to appeal. The permittee may file an appeal for administrative review of the notice under R645-300-200.

170. Final Compliance Review.

After an application is approved, but before the permit is issued, the Division will reconsider its decision to approve the application based on the compliance review required by rule R645-300-132.100 and in light of any new information submitted under R645-301-112.900 and R645-301-113.400.

171. Certifying and Updating Existing Permit Application Information. If the applicant has previously applied for a permit and the required information is already in AVS, then the applicant may update the information as follows:

171.100. If all or part of the information already in AVS is accurate and complete, then the applicant may certify to the Division by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date.

171.200. If part of the information in AVS is missing or incorrect, then the applicant must submit to the Division the necessary information or corrections and swear or affirm, under oath and in writing, that the information the applicant submits is accurate and complete.

171.300. If the applicant can neither certify that the data in AVS is accurate and complete nor make needed corrections, then the applicant must include in the permit application the information required under R645-301-112.

172. The applicant must swear or affirm, under oath and in writing, that all information provided in an application is accurate and complete. The Division will follow the requirements of R645-300-132.430 and R645-301-113.400 prior to permit issuance.

173. The Division may establish a central file to house the applicant's identity information, rather than place duplicate information in each of the applicant's permit application files. The Division will make the information available to the public

upon request.

180. Post Permit Issuance Requirements for the Division and Other Actions Based on Ownership, Control, and Violation Information.

181. Within thirty days, the Division must enter in the AVS the data as follows:

181.100. Permit records after the permit is issued or subsequent changes made;

181.200. Unabated or uncorrected violations after the abatement or correction period for a violation expires;

181.300. Changes to information initially required to be provided by an applicant under R645-301-112 after receiving notice of a change; and

181.400. Changes in violation status after abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

182. Any time the Division discovers that any person owns or controls an operation with an unabated or uncorrected violation, the Division will determine whether enforcement action is appropriate under R645-400, R645-402 or R645-403. The Division must enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

183. The Division must serve a preliminary finding of permanent permit ineligibility on an applicant or operator, based on the control relationships and violations that would make the applicant or operator ineligible for a permit under R645-300-132.400 and R645-301-113.300, if the following criteria are met:

183.100. The applicant or operator has controlled or currently is controlling a coal mining and reclamation operation with a demonstrated pattern of willful violations under R645-301-113.300; and

183.200. The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate your intent not to comply with the Act, its implementing rules, the State program, or the permit.

184. The permittee, applicant or operator may request a hearing on a preliminary finding of permanent permit ineligibility under R645-300-200.

185. Entry into the Applicant Violator System (AVS) Database.

185.100. If the applicant, permittee or operator does not request a hearing, and the time for seeking a hearing has expired, the Division will enter the permanent ineligibility finding into AVS.

185.200. If the applicant, permittee, or operator requests a hearing, the Division will enter a permanent ineligibility finding into the AVS, only if that finding is upheld on administrative appeal.

185.300. At any time, the Division may identify any person who owns or controls an entire operation or any relevant portion or aspect thereof. If the Division identifies such a person, the Division must issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The Division's written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.

185.400. After the Division issues a written preliminary finding under R645-300-185.300, the Division will allow the person subject to the preliminary finding 30 days in which to submit any information tending to demonstrate their lack of ownership or control.

185.500. If after reviewing any information provided under R645-300-185.400, the Division is persuaded that the person is not an owner or controller, the Division will serve a written notice to that effect.

185.600. If, after reviewing any information provided under R645-300-185.400, the Division still finds that a person is an owner or controller, or if the person does not submit any

information within the 30-day period, the Division will issue a written finding and enter the finding into AVS.

185.700. A person identified under R645-300-185.600 may challenge the finding using the provisions of R645-300-132.150.1 through R645-300-132.150.7.

R645-300-200. Administrative and Judicial Review of Decisions on Permits.

The rules in R645-300-200 present the procedures for performing the entitled activities.

210. Administrative Review.

211. General. Within 30 days after an applicant or permittee is notified of the decision of the Division concerning a determination made under R645-106, an application for approval of exploration required under R645-200, a permit for coal mining and reclamation operations, a permit change, a permit renewal, or a transfer, assignment, or sale of permit rights, the applicant, permittee, or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the decision, in accordance with R645-300-200.

212. Hearings.

212.100. The Board will start the administrative hearing within 30 days of such request. The hearing will be on the record and adjudicatory in nature. No person who presided at an informal conference under R645-300-123 will either preside at the hearing or participate in the decision following the hearing or administrative appeal.

212.200. The Board may, under such conditions as it prescribes, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:

212.210. All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

212.220. The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding;

212.230. The relief sought will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

212.240. The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the Division except that continuation under an existing permit may be allowed where the operation has a valid permit issued under 40-10-11 of the Act.

212.300. The hearing will be conducted by the Board under the terms of the R641 Rules, including the requirement that there be no ex parte contact between the Board and representatives of parties appearing before the Board.

212.400. Within 30 days after the close of the record, the Board will issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the Board with respect to the appeal of the decision.

220. Judicial Review.

221. General. Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative hearings as an objector may appeal as provided in R645-300-222 or R645-300-223 if:

221.100. The applicant or person is aggrieved by the decision of the Board in the administrative hearing conducted pursuant to R645-300-200; or

221.200. The Board during administrative review under R645-300-200 fails to act within applicable time limits specified in the State Program.

222. State Program. Action of the Division or Board will be subject to judicial review by a court of competent jurisdiction, as provided for in the State Program, but the availability of such review will not be construed to limit the operation of the rights established in 40-10-21 of the Act.

223. Federal Lands Program. The action of the Division or Board is subject to judicial review by the United States District Court for the district in which the coal exploration or coal mining and reclamation operation is or would be located, in the time and manner provided for in Section 526(a)(2) and (b) of the Federal Act. The availability of such review will not be considered to limit the operations of rights established in Section 520 of the Federal Act.

KEY: reclamation, coal mines

May 23, 2012

40-10-1 et seq.

Notice of Continuation September 6, 2016

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-301. Coal Mine Permitting: Permit Application Requirements.****R645-301-100. General Contents.**

The rules in R645-301-100 present the requirements for the entitled information which should be included in each permit application.

110. Minimum Requirements for Legal, Financial, Compliance and Related Information.

111. Introduction.

111.100. Objectives. The objectives of R645-301-100 are to insure that all relevant information on the ownership and control of persons who conduct coal mining and reclamation operations, the ownership and control of the property to be affected by the operation, the compliance status and history of those persons, and other important information is provided in the application to the Division.

111.200. Responsibility. It is the responsibility of the permit applicant to provide to the Division all of the information required by R645-301-100.

111.300. Applicability. The requirements of R645-301-100 apply to any person who applies for a permit to conduct coal mining and reclamation operations.

111.400. The applicant shall submit the information required by R645-301-112 and R645-301-113.

111.500. The Division will enter the information disclosed under R645-301-110 and R645-301-112 into the AVS database, but need not make a finding as provided for under R645-300-185.300 through R645-300-185.600 before entering the information into the AVS database.

112. Identification of Interests. An application will contain the following:

112.100. A statement as to whether the applicant and operator are a corporation, partnership, single proprietorship, association, or other business entity;

112.200. The name, address, telephone number of the:

112.210. Applicant; and any operator, if different from the applicant;

112.220. Applicant's resident agent; and

112.230. The tax payer identification number for the applicant and operator;

112.300. The name, address and telephone number of each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator; for every such business in the organizational structure of the applicant and operator, the applicant must also provide the following required information for every president, chief executive officer, officer, partner, member, and director (or persons in similar positions), and every person who owns, of record, 10 percent or more of the entity:

112.310. The person's name, address, and telephone number;

112.320. The person's position, title and relationship to the applicant, including percentage of ownership and location in organizational structure;

112.330. For each position, the date the position was assumed, and when submitted under R645-300-147, the date of departure from the position;

112.340. Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number, under which the applicant, the operator, the applicant's partners or principal shareholders, and the operator's partners or principal shareholders operate, or previously operated a coal mining and reclamation operation in the United States within five years preceding the date of the application; and

112.350. The application number or other identifier of, and the regulatory authority for, any other pending coal mine operation permit application filed by the applicant or the

operator in any State in the United States;

112.400. For any coal mining and reclamation operation owned or controlled by either the applicant or operator in the last five years, provide the coal mining and reclamation operation's:

112.410. Permittee's and operator's name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, and the regulatory authority; and

112.420. Ownership or control relationship to the applicant and the operator, including percentage of ownership and location in organizational structure.

112.500. The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

112.600. The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area;

112.700. The MSHA numbers for all mine-associated structures that require MSHA approval; and

112.800. A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by R645-301-112.800 which is not on public file pursuant to Utah law will be held in confidence by the Division as provided under R645-300-124.320.

112.900. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-112.100 through R645-301-112.800.

113. Violation Information. An application will contain the following:

113.100. A statement of whether the applicant, the operator, or any subsidiary, affiliate, or entity which the applicant or the operator own or control or which is under common control of the operator and the applicant has:

113.110. Had a federal or state permit to conduct coal mining and reclamation operations suspended or revoked in the five years preceding the date of submission of the application; or

113.120. Forfeited a performance bond or similar security deposited in lieu of bond in the five years preceding the date of submission of the application;

113.200. A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to under R645-301-113.110 and R645-301-113.120 has occurred, including:

113.210. Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

113.220. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

113.230. The current status of the permit, bond, or similar security involved;

113.240. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

113.250. The current status of the proceedings; and

113.300. For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any derivative State reclamation law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any coal mining and reclamation operation, a list of all violation notices received by the applicant or operator during the three

year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any coal mining and reclamation operation owned or controlled by either the applicant or operator. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

113.310. Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

113.320. A brief description of the violation alleged in the notice;

113.330. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in R645-301-113.300 to obtain administrative or judicial review of the violation;

113.340. The current status of the proceedings and of the violation notice;

113.350. The actions, if any, taken by any person identified in R645-301-113.300 to abate the violation; and

113.360. If the abatement period for a violation in a notice of violation issued under 30 CFR 843.12 or R645-400-320 has not expired, certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation.

113.400. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-113.

114. Right-of-Entry Information.

114.100. An application will contain a description of the documents upon which the applicant bases their legal right to enter and begin coal mining and reclamation operations in the permit area and will state whether that right is the subject of pending litigation. The description will identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

114.200. Where the private mineral estate to be mined has been severed from the private surface estate, an applicant will also submit:

114.210. A copy of the written consent of the surface owner for the extraction of coal by certain coal mining and reclamation operations;

114.220. A copy of the conveyance that expressly grants or reserves the right to extract coal by certain coal mining and reclamation operations; or

114.230. If the conveyance does not expressly grant the right to extract the coal by certain coal mining and reclamation operations, documentation that under applicable Utah law, the applicant has the legal authority to extract the coal by those operations.

114.300. Nothing given under R645-301-114.100 through R645-301-114.200 will be construed to provide the Division with the authority to adjudicate property rights disputes.

115. Status of Unsuitability Claims.

115.100. An application will contain available information as to whether the proposed permit area is within an area designated as unsuitable for coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under R645-103-300, R645-103-400, or 30 CFR Part 769.

115.200. An application in which the applicant claims the exemption described in R645-103-333 will contain information

supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed coal mining and reclamation operations.

115.300. An application that proposes to conduct coal mining and reclamation operations within 300 feet of an occupied dwelling or within 100 feet of a public road must meet the requirements of R645-103-234 or R645-103-235, respectively.

116. Permit Term.

116.100. Each permit application will state the anticipated or actual starting and termination date of each phase of the coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

116.200. If the applicant requires an initial permit term in excess of five years in order to obtain necessary financing for equipment and the opening of the operation, the application will:

116.210. Be complete and accurate covering the specified longer term; and

116.220. Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

117. Insurance, Proof of Publication and Facilities or Structures Used in Common.

117.100. A permit application will contain either a certificate of liability insurance or evidence of self-insurance in compliance with R645-301-800.

117.200. A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the Division will be filed with the Division and will be made a part of the application not later than 4 weeks after the last date of publication as required by R645-300-121.100.

117.300. The plans of a facility or structure that is to be shared by two or more separately permitted coal mining and reclamation operations may be included in one permit application and referenced in the other applications. In accordance with R645-301-800, each permittee will bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application will include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement will demonstrate to the satisfaction of the Division that all responsibilities under the R645 Rules for the facility or structure will be met.

118. Filing Fee. Each permit application to conduct coal mining and reclamation operations pursuant to the State Program will be accompanied by a fee of \$5.00.

120. Permit Application Format and Contents.

121. The permit application will:

121.100. Contain current information, as required by R645-200, R645-300, R645-301 and R645-302.

121.200. Be clear and concise; and

121.300. Be filed in the format required by the Division.

122. If used in the permit application, referenced materials will either be provided to the Division by the applicant or be readily available to the Division. If provided, relevant portions of referenced published materials will be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

123. Applications for permits; permit changes; permit renewals; or transfers, sales or assignments of permit rights will contain the notarized signature of a responsible official of the applicant, that the information contained in the application is

true and correct to the best of the official's information and belief.

130. Reporting of Technical Data.

131. All technical data submitted in the permit application will be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.

132. Technical analyses will be planned by or under the direction of a professional qualified in the subject to be analyzed.

140. Maps and Plans.

141. Maps submitted with permit applications will be presented in a consolidated format, to the extent possible, and will include all the types of information that are set forth on U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area will be at a scale of 1:6,000 or larger. Maps of the adjacent area will clearly show the lands and waters within those areas and be at a scale determined by the Division, but in no event smaller than 1:24,000.

142. All maps and plans submitted with the permit application will distinguish among each of the phases during which coal mining and reclamation operations were or will be conducted at any place within the life of operations. At a minimum, distinctions will be clearly shown among those portions of the life of operations in which coal mining and reclamation operations occurred:

142.100. Prior to August 3, 1977;

142.200. After August 3, 1977, and prior to either:

142.210. May 3, 1978; or

142.220. In the case of an applicant or operator which obtained a small operator's exemption in accordance with the Interim Program rules (MC Rules), January 1, 1979;

142.300. After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the State Program; and

142.400. After the estimated date of issuance of a permit by the Division under the State Program.

150. Completeness. An application for a permit to conduct coal mining and reclamation operations will be complete and will include at a minimum information required under R645-301 and, if applicable, R645-302.

160. Permit change, renewal, transfer, sale and assignment.

Procedures to change, renew, transfer, assign, or sell existing coal mining and reclamation permit rights are presented at R645-303.

R645-301-200. Soils.

The regulations in R645-301-200 present the minimum requirements for information on soil resources which will be included in each permit application.

210. Introduction.

211. The applicant will present a description of the remaining soil resources as specified under R645-301-221. Topsoil and subsoil to be saved under R645-301-232 will be separately removed and segregated from other material.

212. After removal, topsoil will be immediately redistributed in accordance with R645-301-242, stockpiled pending redistribution under R645-301-234, or if demonstrated that an alternative procedure will provide equal or more protection for the topsoil, the Division may, on a case-by-case basis, approve an alternative.

220. Environmental Description.

221. Prime Farmland Investigation. All permit applications, whether or not Prime Farmland is present, will include the results of a reconnaissance inspection of the proposed permit area to indicate whether Prime Farmland exists as given under R645-302-313.

222. Soil Survey. The applicant will provide adequate soil

survey information for those portions of the permit area to be affected by surface operations incident to UNDERGROUND COAL MINING and RECLAMATION ACTIVITIES and for the permit area of SURFACE COAL MINING and RECLAMATION ACTIVITIES consisting of the following:

222.100. A map delineating different soils;

222.200. Soil identification;

222.300. Soil description; and

222.400. Present and potential productivity of existing soils.

223. Soil Characterization. The survey will meet the standards of the National Cooperative Soil Survey as incorporated by reference in R645-302-314.100.

224. Substitute Topsoil. Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application will include results of analyses, trials, and tests as described under R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243. The Division may also require the results of field-site trials or greenhouse tests as required under R645-301-233.

230. Operation Plan.

231. General Requirements. Each permit application will include a:

231.100. Description of the methods for removing and storing topsoil, subsoil, and other materials;

231.200. Demonstration of the suitability of topsoil substitutes or supplements;

231.300. Testing plan for evaluating the results of topsoil handling and reclamation procedures related to revegetation; and

231.400. Narrative that describes the construction, modification, use and maintenance of topsoil handling and storage areas.

232. Topsoil and Subsoil Removal.

232.100. All topsoil will be removed as a separate layer from the area to be disturbed, and segregated.

232.200. Where the topsoil is of insufficient quantity or poor quality for sustaining vegetation, the materials approved by the Division in accordance with R645-301-233.100 will be removed as a separate layer from the area to be disturbed, and segregated.

232.300. If topsoil is less than six inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

232.400. The Division may not require the removal of topsoil for minor disturbances which:

232.410. Occur at the site of small structures, such as power poles, signs, or fence lines; or

232.420. Will not destroy the existing vegetation and will not cause erosion.

232.500. Subsoil Segregation. The Division may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of R645-301-234 and R645-301-242 if it finds that such subsoil layers are necessary to comply with the revegetation requirements of R645-301-353 through R645-301-357.

232.600. Timing. All material to be removed under R645-301-232 will be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

232.700. Topsoil and subsoil removal under adverse conditions. An exception to the requirements of R645-301-232 to remove topsoil or subsoils in a separate layer from an area to be disturbed by surface operations may be granted by the Division where the operator can demonstrate;

232.710. The removal of soils in a separate layer from the

area by the use of conventional machines would be unsafe or impractical because of the slope or other condition of the terrain or because of the rockiness or limited depth of the soils; and

232.720. That the requirements of R645-301-233 have been or will be fulfilled with regard to the use of substitute soil materials unless no available substitute material can be made suitable for achieving the revegetation standards of R645-301-356, in which event the operator will, as a condition of the permit, be required to import soil material of the quality and quantity necessary to achieve such revegetation standards.

233. Topsoil Substitutes and Supplements.

233.100. Selected overburden materials may be substituted for, or used as a supplement to topsoil if the operator demonstrates to the Division that the resulting soil medium is equal to, or more suitable for sustaining vegetation on nonprime farmland areas than the existing topsoil, has a greater productive capacity than that which existed prior to mining for prime farmland reconstruction, and results in a soil medium that is the best available in the permit area to support revegetation.

233.200. The suitability of topsoil substitutes and supplements will be determined on the basis of analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The Division may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of topsoil substitutes or supplements.

233.300. Results of physical and chemical analyses of overburden and topsoil to demonstrate that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil, provided that field-site trials, and greenhouse tests are certified by an approved laboratory in accordance with any one or a combination of the following sources:

233.310. NRCS published data based on established soil series;

233.320. NRCS Technical Guides;

233.330. State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management of U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior; or

233.340. Results of physical and chemical analyses, field-site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

233.400. If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with R645-301-233.300.

234. Topsoil Storage.

234.100. Materials removed under R645-301-232.100, R645-301-232.200, and R645-301-232.300 will be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

234.200. Stockpiled materials will:

234.210. Be selectively placed on a stable site within the permit area;

234.220. Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

234.230. Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the Division; and

234.240. Not be moved until required for redistribution unless approved by the Division.

234.300. Where long-term disturbed areas will result from facilities and preparation plants and where stockpiling of materials removed under R645-301-232.100 would be detrimental to the quality or quantity of those materials, the

Division may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that:

234.310. Such action will not permanently diminish the capability of the topsoil of the host site; and

234.320. The material will be retained in a condition more suitable for redistribution than if stockpiled.

240. Reclamation Plan.

241. General Requirements. Each permit application will include plans for redistribution of soils, use of soil nutrients and amendments and stabilization of soils.

242. Soil Redistribution.

242.100. Topsoil materials removed under R645-301-232.100, R645-301-232.200, and R645-301-232.300 and stored under R645-301-234 will be redistributed in a manner that:

242.110. Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

242.120. Prevents excess compaction of the materials; and

242.130. Protects the materials from wind and water erosion before and after seeding and planting.

242.200. Before redistribution of the materials removed under R645-301-232 the regraded land will be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

242.300. The Division may not require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or roads if it determines that:

242.310. Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and

242.320. Such embankments will be otherwise stabilized.

243. Soil Nutrients and Amendments. Nutrients and soil amendments will be applied to the initially redistributed material when necessary to establish the vegetative cover.

244. Soil Stabilization.

244.100. All exposed surface areas will be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

244.200. Suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The Division may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

244.300. Rills and gullies, which form in areas that have been regraded and topsoiled and which either:

244.310. Disrupt the approved postmining land use or the reestablishment of the vegetative cover, or

244.320. Cause or contribute to a violation of water quality standards for receiving streams will be filled, regraded, or otherwise stabilized; topsoil will be replaced; and the areas will be reseeded or replanted.

250. Performance Standards.

251. All topsoil, subsoil and topsoil substitutes or supplements will be removed, maintained and redistributed according to the plan given under R645-301-230 and R645-301-240.

252. All stockpiled topsoil, subsoil and topsoil substitutes or supplements will be located, maintained and redistributed according to plans given under R645-301-230 and R645-301-240.

R645-301-300. Biology.

310. Introduction. Each permit application will include descriptions of the:

311. Vegetative, fish, and wildlife resources of the permit area and adjacent areas as described under R645-301-320;

312. Potential impacts to vegetative, fish and wildlife resources and methods proposed to minimize these impacts during coal mining and reclamation operations as described under R645-301-330 and R645-301-340; and

313. Proposed reclamation designed to restore or enhance vegetative, fish, and wildlife resources to a condition suitable for the designated postmining land use as described under R645-301-340.

320. Environmental Description.

321. Vegetation Information. The permit application will contain descriptions as follows:

321.100. If required by the Division, plant communities within the proposed permit area and any reference area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES and areas affected by surface operations incident to an underground mine for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES. This description will include information adequate to predict the potential for reestablishing vegetation; and

321.200. The productivity of the land before mining within the proposed permit area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES and areas affected by surface operations incident to an underground mine for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity will be determined by yield data or estimates for similar sites based on current data from the U. S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.

322. Fish and Wildlife Information. Each application will include fish and wildlife resource information for the permit area and adjacent areas.

322.100. The scope and level of detail for such information will be determined by the Division in consultation with state and federal agencies with responsibilities for fish and wildlife and will be sufficient to design the protection and enhancement plan required under R645-301-333.

322.200. Site-specific resource information necessary to address the respective species or habitats will be required when the permit area or adjacent area is likely to include:

322.210. Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or those species or habitats protected by similar state statutes;

322.220. Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

322.230. Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

322.300. Fish and Wildlife Service review. Upon request, the Division will provide the resource information required under R645-301-322 and the protection and enhancement plan required under R645-301-333 to the U.S. Fish and Wildlife Service Regional or Field Office for their review. This information will be provided within 10 days of receipt of the request from the Service.

323. Maps and Aerial Photographs. Maps or aerial photographs of the permit area and adjacent areas will be provided which delineate:

323.100. The location and boundary of any proposed reference area for determining the success of revegetation;

323.200. Elevations and locations of monitoring stations used to gather data for fish and wildlife, and any special habitat features;

323.300. Each facility to be used to protect and enhance fish and wildlife and related environmental values; and

323.400. If required, each vegetative type and plant community, including sample locations. Sufficient adjacent areas will be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species identified under R645-301-322.

330. Operation Plan. Each application will contain a plan for protection of vegetation, fish, and wildlife resources throughout the life of the mine. The plan will provide:

331. A description of the measures taken to disturb the smallest practicable area at any one time and through prompt establishment and maintenance of vegetation for interim stabilization of disturbed areas to minimize surface erosion. This may include part or all of the plan for final revegetation as described in R645-301-341.100 and R645-301-341.200;

332. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES a description of the anticipated impacts of subsidence on renewable resource lands identified in R645-301-320, and how such impact will be mitigated;

333. A description of how, to the extent possible, using the best technology currently available, the operator will minimize disturbances and adverse impacts to fish and wildlife and related environmental values during coal mining and reclamation operations, including compliance with the Endangered Species Act of 1973 during coal mining and reclamation operations, including the location and operation of haul and access roads and support facilities so as to avoid or minimize impacts on important fish and wildlife species or other species protected by state or federal law; and how enhancement of these resources will be achieved, where practicable. This Description will:

333.100. Be consistent with the requirements of R645-301-358;

333.200. Apply, at a minimum, to species and habitats identified under R645-301-322; and

333.300. Include protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity.

340. Reclamation Plan.

341. Revegetation. Each application will contain a reclamation plan for final revegetation of all lands disturbed by coal mining and reclamation operations, except water areas and the surface of roads approved as part of the postmining land use, as required in R645-301-353 through R645-301-357, showing how the applicant will comply with the biological protection performance standards of the State Program. The plan will include, at a minimum:

341.100. A detailed schedule and timetable for the completion of each major step in the revegetation plan;

341.200. Descriptions of the following:

341.210. Species and amounts per acre of seeds and/or seedlings to be used. If fish and wildlife habitat will be a postmining land use, the criteria of R645-301-342.300 apply.

341.220. Methods to be used in planting and seeding;

341.230. Mulching techniques, including type of mulch and rate of application;

341.240. Irrigation, if appropriate, and pest and disease control measures, if any; and

341.250. Measures proposed to be used to determine the success of revegetation as required in R645-301-356.

341.300. The Division may require greenhouse studies,

field trials, or equivalent methods of testing proposed or potential revegetation materials and methods to demonstrate that revegetation is feasible pursuant to R645-300-133.710.

342. Fish and Wildlife. Each application will contain a fish and wildlife plan for the reclamation and postmining phase of operation consistent with R645-301-330, the performance standards of R645-301-358 and include the following:

342.100. Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement will be given explaining why enhancement is not practicable.

342.200. Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas will be selected on the basis of the following criteria:

342.210. Their proven nutritional value for fish or wildlife;

342.220. Their use as cover for fish or wildlife; and

342.230. Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants will be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

342.300. Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the operator will intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

342.400. Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the operator will intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

350. Performance Standards.

351. General Requirements. All coal mining and reclamation operations will be carried out according to plans provided under R645-301-330 through R645-301-340.

352. Contemporaneous Reclamation. Revegetation on all land that is disturbed by coal mining and reclamation operations, will occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for combined SURFACE and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES issued under R645-302-280. The Division may establish schedules that define contemporaneous reclamation.

353. Revegetation: General Requirements. The permittee will establish on regraded areas and on all other disturbed areas, except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan.

353.100. The vegetative cover will be:

353.110. Diverse, effective, and permanent;

353.120. Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the Division;

353.130. At least equal in extent of cover to the natural vegetation of the area; and

353.140. Capable of stabilizing the soil surface from erosion.

353.200. The reestablished plant species will:

353.210. Be compatible with the approved postmining land use;

353.220. Have the same seasonal characteristics of growth as the original vegetation;

353.230. Be capable of self-regeneration and plant succession;

353.240. Be compatible with the plant and animal species of the area; and

353.250. Meet the requirements of applicable Utah and federal seed, poisonous and noxious plant; and introduced species laws or regulations.

353.300. The Division may grant exception to the requirements of R645-301-353.220 and R645-301-353.230 when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

353.400. When the approved postmining land use is cropland, the Division may grant exceptions to the requirements of R645-301-353.110, R645-301-353.130, R645-301-353.220 and R645-301-353.230. The requirements of R645-302-317 apply to areas identified as prime farmland.

354. Revegetation: Timing. Disturbed areas will be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

355. Revegetation: Mulching and Other Soil Stabilizing Practices. Suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The Division may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

356. Revegetation: Standards for Success.

356.100. Success of revegetation will be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the extent of cover of the reference area or other approved success standard, and the general requirements of R645-301-353.

356.110. Standards for success, statistically valid sampling techniques for measuring success, and approved methods are identified in the Division's "Vegetation Information Guidelines, Appendix A."

356.120. Standards for success will include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking will be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success will use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

356.200. Standards for success will be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

356.210. For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area will be at least equal to that of a reference area or such other success standards approved by the Division.

356.220. For areas developed for use as cropland, crop production on the revegetated area will be at least equal to that of a reference area or such other success standards approved by the Division. The requirements of R645-302-310 through R645-302-317 apply to areas identified as prime farmland.

356.230. For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation will be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

356.231. Minimum stocking and planting arrangements will be specified by the Division on the basis of local and regional conditions and after consultation with and approval by Utah agencies responsible for the administration of forestry and wildlife programs. Consultation and approval will be on a permit specific basis and will be performed in accordance with the "Vegetation Information Guidelines" of the division.

356.232. Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement will have utility for the approved postmining land use. At the time of bond release, such trees and shrubs will be healthy, and at least 80 percent will have been in place for at least 60 percent of the applicable minimum period of responsibility. No trees and shrubs in place for less than two growing seasons will be counted in determining stocking adequacy.

356.233. Vegetative ground cover will not be less than that required to achieve the approved postmining land use.

356.240. For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover will not be less than that required to control erosion.

356.250. For areas previously disturbed by mining that were not reclaimed to the requirements of R645-200 through R645-203 and R645-301 through R645-302 and that are remined or otherwise redisturbed by coal mining and reclamation operations, at a minimum, the vegetative ground cover will be not less than the ground cover existing before redisturbance and will be adequate to control erosion.

356.300. Siltation structures will be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case will the structure be removed sooner than two years after the last augmented seeding.

356.400. When a siltation structure is removed, the land on which the siltation structure was located will be revegetated in accordance with the reclamation plan and R645-301-353 through R645-301-357.

357. Revegetation: Extended Responsibility Period.

357.100. The period of extended responsibility for successful vegetation will begin after the last year of augmented seeding, fertilization, irrigation, or other work, excluding husbandry practices that are approved by the Division in accordance with paragraph R645-301-357.300.

357.200. Vegetation parameters identified in R645-301-356.200 will equal or exceed the approved success standard during the growing seasons for the last two years of the responsibility period. The period of extended responsibility will continue for five or ten years based on precipitation data reported pursuant to R645-301-724.411, as follows:

357.210. In areas of more than 26.0 inches average annual precipitation, the period of responsibility will continue for a period of not less than five full years.

357.220. In areas of 26.0 inches or less average annual precipitation, the period of responsibility will continue for a period of not less than ten full years.

357.300. Husbandry Practices - General Information

357.301. The Division may approve certain selective husbandry practices without lengthening the extended responsibility period. Practices that may be approved are identified in R645-301-357.310 through R645-301-357.365. The operator may propose to use additional practices, but they would need to be approved as part of the Utah Program in accordance with 30 CFR 732.17. Any practices used will first be incorporated into the mining and reclamation plan and approved in writing by the Division. Approved practices are normal conservation practices for unmined lands within the region which have land uses similar to the approved postmining land use of the disturbed area. Approved practices may continue as part of the postmining land use, but discontinuance of the practices after the end of the bond liability period will not

jeopardize permanent revegetation success. Augmented seeding, fertilization, or irrigation will not be approved without extending the period of responsibility for revegetation success and bond liability for the areas affected by said activities and in accordance with R645-301-820.330.

357.302. The Permittee will demonstrate that husbandry practices proposed for a reclaimed area are not necessitated by inadequate grading practices, adverse soil conditions, or poor reclamation procedures.

357.303. The Division will consider the entire area that is bonded within the same increment, as defined in R645-301-820.110, when calculating the extent of area that may be treated by husbandry practices.

357.304. If it is necessary to seed or plant in excess of the limits set forth under R645-301-357.300, the Division may allow a separate extended responsibility period for these reseeded or replanted areas in accordance with R645-301-820.330.

357.310. Reestablishing trees and shrubs

357.311. Trees or shrubs may be replanted or reseeded at a rate of up to a cumulative total of 20% of the required stocking rate through 40% of the extended responsibility period.

357.312. If shrubs are to be established by seed in areas of established vegetation, small areas will be scalped. The number of shrubs to be counted toward the tree and shrub density standard for success from each scalped area is limited to one.

357.320. Weed Control and Associated Revegetation. Weed control through chemical, mechanical, and biological means discussed in R645-301-357.321 through R645-301-357.323 is allowed through the entire extended responsibility period for noxious weeds and through the first 20% of the responsibility period for other weeds. Any revegetation necessitated by the following weed control methods will be performed according to the seeding and transplanting parameters set forth in R645-301-357.324.

357.321. Chemical Weed Control. Weed control through chemical means, following the current Weed Control Handbook (published annually or biannually by the Utah State University Cooperative Extension Service) and herbicide labels, is allowed.

357.322. Mechanical Weed Control. Mechanical practices that may be approved include hand roguing, grubbing and mowing.

357.323. Biological Weed Control. Selective grazing by domestic livestock is allowed. Biological control of weeds through disease, insects, or other biological weed control agents is allowed but will be approved on a case-by-case basis by the Division, and other appropriate agency or agencies which have the authority to regulate the introduction and/or use of biological control agents.

357.324. Where weed control practices damage desirable vegetation, areas treated to control weeds may be reseeded or replanted according to the following limitations. Up to a cumulative total of 15% of a reclaimed area may be reseeded or replanted during the first 20% of the extended responsibility period without restarting the responsibility period. After the first 20% of the responsibility period, no more than 3% of the reclaimed area may be reseeded in any single year without restarting the responsibility period, and no continuous reseeded area may be larger than one acre. Furthermore, no seeding is allowed after the first 60% of the responsibility period or Phase II bond release, whichever comes first. Any seeding outside these parameters is considered to be "augmentative seeding," and will restart the extended responsibility period.

357.330. Control of Other Pests.

357.331. Control of big game (deer, elk, moose, antelope) may be used only during the first 60% of the extended responsibility period or until Phase II bond release, whichever comes first. Any methods used will first be approved by the Division and, as appropriate, the land management agency and

the Utah Division of Wildlife Resources. Methods that may be used include fencing and other barriers, repellents, scaring, shooting, and trapping and relocation. Trapping and special hunts or shooting will be approved by the Division of Wildlife Resources. Other control techniques may be allowed but will be considered on a case-by-case basis by the Division and by the Utah Division of Wildlife Resources. Appendix C of the Division's "Vegetation Information Guidelines" includes a non-exhaustive list of publications containing big game control methods.

357.332. Control of small mammals and insects will be approved on a case-by-case basis by the Utah Division of Wildlife Resources and/or the Utah Department of Agriculture. The recommendations of these agencies will also be approved by the appropriate land management agency or agencies. Small mammal control will be allowed only during the first 60% of the extended responsibility period or until Phase II bond release, whichever comes first. Insect control will be allowed through the entire extended responsibility period if it is determined, through consultation with the Utah Department of Agriculture or Cooperative Extension Service, that a specific practice is being performed on adjacent unmined lands.

357.340. Natural Disasters and Illegal Activities Occurring After Phase II Bond Release. Where necessitated by a natural disaster, excluding climatic variation, or illegal activities, such as vandalism, not caused by any lack of planning, design, or implementation of the mining and reclamation plan on the part of the Permittee, the seeding and planting of the entire area which is significantly affected by the disaster or illegal activities will be allowed as an accepted husbandry practice and thus will not restart the extended responsibility period. Appendix C of the Division's "Vegetation Information Guidelines" references publications that show methods used to revegetate damaged land. Examples of natural disasters that may necessitate reseeding which will not restart the extended responsibility period include wildfires, earthquakes, and mass movements originating outside the disturbed area.

357.341. The extent of the area where seeding and planting will be allowed will be determined by the Division in cooperation with the Permittee.

357.342. All applicable revegetation success standards will be achieved on areas reseeded following a disaster, including R645-301-356.232 for areas with a designated postmining land use of forestry or wildlife.

357.343. Seeding and planting after natural disasters or illegal activities will only be allowed in areas where Phase II bond release has been granted.

357.350. Irrigation. The irrigation of transplanted trees and shrubs, but not of general areas, is allowed through the first 20% of the extended responsibility period. Irrigation may be by such methods as, but not limited to, drip irrigation, hand watering, or sprinkling.

357.360. Highly Erodible Area and Rill and Gully Repair. The repair of highly erodible areas and rills and gullies will not be considered an augmentative practice, and will thus not restart the extended responsibility period, if the affected area as defined in R645-301-357.363 comprises no more than 15% of the disturbed area for the first 20% of the extended responsibility period and if no continuous area to be repaired is larger than one acre.

357.361. After the first 20% of the extended responsibility period but prior to the end of the first 60% of the responsibility period or until Phase II bond release, whichever comes first, highly erodible area and rill and gully repair will be considered augmentative, and will thus restart the responsibility period, if the area to be repaired is greater than 3% of the total disturbed area or if a continuous area is larger than one acre.

357.362. The extent of the affected area will be determined by the Division in cooperation with the Permittee.

357.363. The area affected by the repair of highly erodible areas and rills and gullies is defined as any area that is reseeded as a result of the repair. Also included in the affected areas are interspatial areas of thirty feet or less between repaired rills and gullies. Highly erodible areas are those areas which cannot usually be stabilized by ordinary conservation treatments and if left untreated can cause severe erosion or sediment damage.

357.364. The repair and/or treatment of rills and gullies which result from a deficient surface water control or grading plan, as defined by the recurrence of rills and gullies, will be considered an augmentative practice and will thus restart the extended responsibility period.

357.365. The Permittee shall demonstrate by specific plans and designs the methods to be used for the treatment of highly erodible areas and rills and gullies. These will be based on a combination of treatments recommended in the Soil Conservation Service Critical Area Planting recommendations, literature recommendations including those found in Appendix C of the Division's "Vegetation Information Guidelines", and other successful practices used at other reclamation sites in the State of Utah. Any treatment practices used will be approved by the Division.

358. Protection of Fish, Wildlife, and Related Environmental Values. The operator will, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and will achieve enhancement of such resources where practicable.

358.100. No coal mining and reclamation operation will be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973. The operator will promptly report to the Division any state- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the Division will consult with appropriate state and federal fish and wildlife agencies and, after consultation, will identify whether, and under what conditions, the operator may proceed.

358.200. No coal mining and reclamation operations will be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator will promptly report to the Division any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the Division will consult with the U.S. Fish and Wildlife Service and the Utah Division of Wildlife Resources and, after consultation, will identify whether, and under what conditions, the operator may proceed.

358.300. Nothing in the R645 Rules will authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 et seq.

358.400. The operator conducting coal mining and reclamation operations will avoid disturbances to, enhance where practicable, restore, or replace, wetlands and riparian vegetation along rivers and streams and bordering ponds and lakes. Coal mining and reclamation operations will avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

358.500. Each operator will, to the extent possible using the best technology currently available:

358.510. Ensure that electric powerlines and other transmission facilities used for, or incidental to, coal mining and reclamation operations on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the Division determines that such requirements are

unnecessary;

358.520. Design fences, overland conveyers, and other potential barriers to permit passage for large mammals, except where the Division determines that such requirements are unnecessary; and

358.530. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

R645-301-400. Land Use and Air Quality.

The rules in R645-301-400 present the requirements for information related to Land Use and Air Quality which are to be included in each permit application.

410. Land Use. Each permit application will include a descriptions of the premining and proposed postmining land use(s).

411. Environmental Description.

411.100. Premining Land-Use Information. The application will contain a statement of the condition and capability of the land which will be affected by coal mining and reclamation operations within the proposed permit area, including:

411.110. A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use of the land will also be described;

411.120. A narrative of land capability which analyzes the land-use description in conjunction with other environmental resources information required under R645-301-411.100, and R645-301 and R645-302. The narrative will provide analyses of the capability of the land before any coal mining and reclamation operations to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the area proposed to be affected by coal mining and reclamation operations; and

411.130. A description of the existing land uses and land-use classifications under local law, if any, of the proposed permit and adjacent areas.

411.140. Cultural and Historic Resources Information.

The application will contain maps as described under R645-301-411.141 and a supporting narrative which describe the nature of cultural and historic resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas. The description will be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and from local archeological, historic, and cultural preservation agencies.

411.141. Cultural and Historic Resources Maps. These maps will clearly show:

411.141.1. The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas;

411.141.2. Each cemetery that is located in or within 100 feet of the proposed permit area; and

411.141.3. Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act.

411.142. Coordination with the State Historic Preservation Officer (SHPO). The narrative presented under R645-301-411.140 will also describe coordination efforts with and present evidence of clearances by the SHPO. For any publicly owned parks or places listed on the National Register of Historic Places that may be adversely affected by the proposed coal mining and reclamation operations, each plan will describe the measures to

be used:

411.142.1. To prevent adverse impacts; or

411.142.2. If valid existing rights exist, as determined under R645-103-231, or joint agency approval is to be obtained under R645-103-236, to minimize adverse impacts.

411.143. The Division may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the national Register of Historic Places through:

411.143.1. Collection of additional information;

411.143.2. Conducting field investigations; or

411.143.3. Other appropriate analyses.

411.144. The Division may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

411.200. Previous Mining Activity. The application will state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

411.210. The type of mining method used;

411.220. The coal seams or other mineral strata mined;

411.230. The extent of coal or other minerals removed;

411.240. The approximate dates of past mining; and

411.250. The uses of the land preceding mining.

412. Reclamation Plan.

412.100. Postmining Land-Use Plan. Each application will contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land-use policies and plans. The plan will explain:

412.110. How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

412.120. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, where range or grazing is the proposed postmining use, the detailed management plans to be implemented;

412.130. Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900; and

412.140. The consideration which has been given to making all of the proposed coal mining and reclamation operations consistent with surface owner plans and applicable Utah and local land-use plans and programs.

412.200. Land Owner or Surface Manager Comments. The description will be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and Utah and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

412.300. Suitability and Compatibility. Assure that final fills containing excess spoil are suitable for reclamation and revegetation and are compatible with the natural surroundings and the approved postmining land use.

413. Performance Standards.

413.100. Postmining Land Use. All disturbed areas will be restored in a timely manner to conditions that are capable of supporting:

413.110. The uses they were capable of supporting before

any mining; or

413.120. Higher or better uses.

413.200. Determining Premining Uses of Land.

413.210. The premining uses of land to which the postmining land use is compared will be those uses which the land previously supported, if the land has not been previously mined and has been properly managed.

413.220. The postmining land use for land that has been previously mined and not reclaimed will be judged on the basis of the land use that existed prior to any mining; provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use will be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

413.300. Criteria for Alternative Postmining Land Uses. Higher or better uses may be approved by the Division as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

413.310. There is a reasonable likelihood for achievement of the use;

413.320. The use does not present any actual or probable hazard to public health or safety, or threat of water diminution or pollution; and

413.330. The use will not:

413.331. Be impractical or unreasonable;

413.332. Be inconsistent with applicable land-use policies or plans;

413.333. Involve unreasonable delay in implementation; or

413.334. Cause or contribute to violation of federal, Utah, or local law.

414. Interpretation of R645-301-412 and R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900 for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, Reclamation Plan: Postmining Land Use. The requirements of R645-301-412-130, for approval of an alternative postmining land use, may be met by requesting approval through the permit revision procedures of R645-303-220 rather than requesting such approval in the original permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land-use capability as required by R645-301-413.100. An application for a permit revision of this type:

414.100. Must be submitted in accordance with the filing deadlines of R645-303-220;

414.200. Will constitute a significant alteration from the mining operations contemplated by the original permit; and

414.300. Will be subject to the requirements of R645-300-120 through R645-300-155 and R645-300-200.

420. Air Quality.

421. Coal mining and reclamation operations will be conducted in compliance with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and any other applicable Utah or federal statutes and regulations containing air quality standards.

422. The application will contain a description of coordination and compliance efforts which have been undertaken by the applicant with the Utah Division of Air Quality.

423. For all SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates exceeding 1,000,000 tons of coal per year, the application will contain an air pollution control plan which includes the following:

423.100. An air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices proposed under R645-301-423.200 to comply with federal and Utah air quality standards; and

423.200. A plan for fugitive dust control practices as required under R645-301-244.100 and R645-301-244.300.

424. All plans for SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates of 1,000,000 tons of coal per year or less, will include a plan for fugitive dust control practices as required under R645-301-244 and R645-301-244.300.

425. All plans for SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates of 1,000,000 tons or less will include an air quality monitoring program, if required by the division, to provide sufficient data to judge the effectiveness of the fugitive dust control plan required under R645-301-424.

R645-301-500. Engineering.

The rules in R645-301-500 present the requirements for engineering information which is to be included in a permit application.

510. Introduction. The engineering section of the permit application is divided into the operation plan, reclamation plan, design criteria, and performance standards. All of the activities associated with the coal mining and reclamation operations must be designed, located, constructed, maintained, and reclaimed in accordance with the operation and reclamation plan. All of the design criteria associated with the operation and reclamation plan must be met.

511. General Requirements. Each permit application will include descriptions of:

511.100. The proposed coal mining and reclamation operations with attendant maps, plans, and cross sections;

511.200. The proposed mining operation and its potential impacts to the environment as well as methods and calculations utilized to achieve compliance with design criteria; and

511.300. Reclamation.

512. Certification.

512.100. Cross Sections and Maps. Certain cross sections and maps required to be included in a permit application will be prepared by, or under the direction of, and certified by: a qualified, registered, professional engineer; a professional geologist; or a qualified, registered, professional land surveyor, with assistance from experts in related fields such as hydrology, geology and landscape architecture. Cross sections and maps will be updated as required by the Division. The following cross sections and maps will be certified:

512.110. Mine workings to the extent known as described under R645-301-521.110;

512.120. Surface facilities and operations as described under R645-301-521.124, R645-301-521.164, R645-301-521.165 and R645-301-521.167;

512.130. Surface configurations as described under R645-301-542.300 and R645-302-200;

512.140. Hydrology as described under R645-301-722, and as appropriate, R645-301-731.700 through R645-301-731.740; and

512.150. Geologic cross sections and maps as described under R645-301-622.

512.200. Plans and Engineering Designs. Excess spoil, durable rock fills, coal mine waste, impoundments, primary roads and variances from approximate original contour require certification by a qualified registered professional engineer.

512.210. Excess Spoil. The professional engineer experienced in the design of earth and rock fills will certify the design according to R645-301-535.100.

512.220. Durable Rock Fills. The professional engineer experienced in the design of earth and rock fills must certify that

the durable rock fill design will ensure the stability of the fill and meet design requirements according to R645-301-535.100 and R645.301-535.300.

512.230. Coal Mine Waste. The professional engineer experienced in the design of similar earth and waste structures must certify the design of the disposal facility according to R645-301-536.

512.240. Impoundments. The professional engineer will use current, prudent, engineering practices and will be experienced in the design and construction of impoundments and certify the design of the impoundment according to R645-301-743.

512.250. Primary Roads. The professional engineer will certify the design and construction or reconstruction of primary roads as meeting the requirements of R645-301-534.200 and R645-301-742.420.

512.260. Variance From Approximate Original Contour. The professional engineer will certify the design for the proposed variance from the approximate original contour, as described under R645-302-270, in conformance with professional standards established to assure the stability, drainage and configuration necessary for the intended use of the site.

513. Compliance With MSHA Regulations and MSHA Approvals.

513.100. Coal processing waste dams and embankments will comply with MSHA, 30 CFR 77.216-1 and 30 CFR 77.216-2 (see R645-301-528.400 and R645-301-536.820).

513.200. Impoundments and sedimentation ponds meeting the size or other qualifying criteria of MSHA, 30 CFR 77.216(a) will comply with the requirements of MSHA, 30 CFR 77.216 (see R645-301-533.600, R645-301-742.222, and R645-301-742.223).

513.300. Underground development waste, coal processing waste and excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by MSHA and the Division (see R645-301-528.321).

513.400. Refuse piles will meet the requirements of MSHA, 30 CFR 77.214 and 30 CFR 77.215 (see R645-301-536.900).

513.500. Each shaft, drift, adit, tunnel, exploratory hole, entryway or other opening to the surface from the underground will be capped, sealed, backfilled or otherwise properly managed consistent with MSHA, 30 CFR 75.1711 (see R645-301-551).

513.600. Discharges into an underground mine are prohibited, unless specifically approved by the Division after a demonstration that the discharge will meet the approval of MSHA (see R645-301-731.511.4).

513.700. The nature, timing and sequence of the SURFACE COAL MINING AND RECLAMATION ACTIVITIES that propose to mine closer than 500 feet to an active underground mine are jointly approved by the Division and MSHA (see R645-301-523.220).

513.800. Coal mine waste fires will be extinguished in accordance with a plan approved by MSHA and the Division (see R645-301-528.323.1).

514. Inspections. All engineering inspections, excepting those described under R645-301-514.320, will be conducted by a qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer.

514.100. Excess Spoil. The professional engineer or specialist will be experienced in the construction of earth and rock fills and will periodically inspect the fill during construction. Regular inspections will also be conducted during placement and compaction of fill materials.

514.110. Such inspections will be made at least quarterly throughout construction and during critical construction periods.

Critical construction periods will include at a minimum:

514.111. Foundation preparation, including the removal of all organic material and topsoil;

514.112. Placement of underdrains and protective filter systems;

514.113. Installation of final surface drainage systems; and

514.114. The final graded and revegetated fill.

514.120. The qualified registered professional engineer will provide a certified report to the Division promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and the R645-301 and R645-302 Rules. The report will include appearances of instability, structural weakness, and other hazardous conditions.

514.130. Certified reports on Drainage System and Protective Filters.

514.131. The certified report on the drainage system and protective filters will include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase will be certified separately.

514.132. Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with R645-301-535.300 and R645-301-745.300, color photographs will be taken of the underdrain as the underdrain system is being formed.

514.133. The photographs accompanying each certified report will be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

514.140. Inspection Reports. A copy of each inspection report will be retained at or near the mine site.

514.200. Refuse Piles. The professional engineer or specialist experienced in the construction of similar earth and waste structures will inspect the refuse pile during construction.

514.210. Regular inspections by the engineer or specialist will also be conducted during placement and compaction of coal mine waste materials. More frequent inspections will be conducted if a danger of harm exists to the public health and safety or the environment. Inspections will continue until the refuse pile has been finally graded and revegetated or until a later time as required by the Division.

514.220. Such inspection will be made at least quarterly throughout construction and during the following critical construction periods:

514.221. Foundation preparation including the removal of all organic material and topsoil;

514.222. Placement of underdrains and protective filter systems;

514.223. Installation of final surface drainage systems; and

514.224. The final graded and revegetated facility.

514.230. The qualified registered professional engineer will provide a certified report to the Division promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and R645 Rules. The report will include appearances of instability, structural weakness, and other hazardous conditions.

514.240. The certified report on the drainage system and protective filters will include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase will be certified separately. The photographs accompanying each certified report will be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

514.250. A copy of each inspection report will be retained at or near the mine site.

514.300. Impoundments.

514.310. Certified Inspection. The professional engineer or specialist experienced in the construction of impoundments will inspect the impoundment.

514.311. Inspections will be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

514.312. The qualified registered professional engineer will promptly, after each inspection, provide to the Division, a certified report that the impoundment has been constructed and maintained as designed and in accordance with the approved plan and the R645 Rules. The report will include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

514.313. A copy of the report will be retained at or near the mine site.

514.320. Impoundments meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR Sec. 77.216 must be examined in accordance with 30 CFR Sec. 77.216-3. Impoundments not meeting the NRCS Class B or C Criteria for dams in TR-60, or subject to 30 CFR Sec. 77.216, shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for the appearance of structural weakness and other hazardous conditions.

515. Reporting and Emergency Procedures.

515.100. The permit application will incorporate a description of the procedure for reporting a slide. The requirements for the description are: At any time a slide occurs which may have a potential adverse effect on public, property, health, safety, or the environment, the permittee who conducts the coal mining and reclamation operations will notify the Division by the fastest available means and comply with any remedial measures required by the Division.

515.200. Impoundment Hazards. The permit application will incorporate a description of notification when potential impoundment hazards exist. The requirements for the description are: If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment will promptly inform the Division of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Division will be notified immediately. The Division will then notify the appropriate agencies that other emergency procedures are required to protect the public.

515.300. The permit application will incorporate a description of procedures for temporary cessation of operations as follows:

515.310. Temporary abandonment will not relieve a person of his or her obligation to comply with any provisions of the approved permit.

515.311. Each person who conducts UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will effectively support and maintain all surface access openings to underground operations, and secure surface facilities in areas in which there are no current operations, but operations are to be resumed under an approved permit.

515.312. Each person who conducts SURFACE COAL MINING AND RECLAMATION ACTIVITIES will effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit.

515.320. Before temporary cessation of coal mining and reclamation operations for a period of 30 days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, each person who conducts coal mining and reclamation operations will submit to the Division a notice of intention to cease or abandon operations. This notice will include:

515.321. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, a statement of the exact number of surface acres and the horizontal and vertical extent of subsurface strata which have been in the permit area prior to cessation or abandonment, the extent and kind of reclamation of surface area which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures and water treatment activities that will continue during the temporary cessation.

515.322. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, a statement of the exact number of acres which will have been affected in the permit area prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

516. Prevention of Slides in SURFACE COAL MINING AND RECLAMATION ACTIVITIES. An undisturbed natural barrier will be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the Division as is needed to assure stability. The barrier will be retained in place to prevent slides and erosion.

520. Operation Plan.

521. General. The applicant will include a plan, with maps, cross sections, narrative, descriptions, and calculations indicating how the relevant requirements are met. The permit application will describe and identify the lands subject to coal mining and reclamation operations over the estimated life of the operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought.

521.100. Cross Sections and Maps. The application will include cross sections, maps and plans showing all the relevant information required by the Division, to include, but not be limited to:

521.110. Previously Mined Areas. These maps will clearly show:

521.111. The location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent areas. The map will be prepared and certified according to R645-301-512; and

521.112. The location and extent of existing or previously surface-mined areas within the proposed permit area. The maps will be prepared and certified according to R645-301-512.

521.120. Existing Surface and Subsurface Facilities and Features. These maps will clearly show:

521.121. The location of all buildings in and within 100 feet of the proposed permit area, with identification of the current use of the buildings;

521.122. The location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

521.123. Each public road located in or within 100 feet of the proposed permit area;

521.124. The location and size of existing areas of spoil, waste, coal development waste, and noncoal waste disposal,

dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area. The map will be prepared and certified according to R645-301-512; and

521.125. The location of each sedimentation pond, permanent water impoundment, coal processing waste bank and coal processing waste dam and embankment in accordance with R645-301-512.100, R645-301-512.230, R645-301-521.143, R645-301-521.169, R645-301-528.340, R645-301-531, R645-301-533.600, R645-301-533.700, R645-301-535.140 through R645-301-535.152, R645-301-536.600, R645-301-536.800, R645-301-542.500, R645-301-732.210, and R645-301-733.100.

521.130. Landowners and Right of Entry and Public Interest Maps. These maps and cross sections will clearly show:

521.131. All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

521.132. The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin coal mining and reclamation operations; and

521.133. The measures to be used to ensure that the interests of the public and landowners affected are protected if, under R645-103-234, the applicant seeks to have the Division approve:

521.133.1. Conducting the proposed coal mining and reclamation operations within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

521.133.2. Relocating a public road.

521.140. Mine Maps and Permit Area Maps. These maps and/or cross-section drawings will clearly indicate:

521.141. The boundaries of all areas proposed to be affected over the estimated total life of the coal mining and reclamation operations, with a description of size, sequence and timing of the mining of subareas for which it is anticipated that additional permits will be sought; the coal mining and reclamation operations to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations;

521.142. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the underground workings and the location and extent of areas in which planned-subsidence mining methods will be used and which includes all areas where the measures will be taken to prevent, control, or minimize subsidence and subsidence-related damage (refer to R645-301-525); and

521.143. The proposed disposal sites for placing underground mine development waste and excess spoil generated at surface areas affected by surface operations and facilities for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and the proposed disposal site and design of the spoil disposal structures for purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES according to R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

521.150. Land Surface Configuration Maps. These maps will clearly indicate sufficient slope measurements or surface contours to adequately represent the existing land surface configuration of the proposed permit area for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES and the area affected by surface operations and facilities for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES measured and recorded according to the following:

521.151. Each measurement will consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed, or, where this is impractical, at locations specified by the Division. Maps will be prepared and certified according to R645-301-512; and

521.152. Where the area has been previously mined, the measurements will extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the Division to be representative of the premining configuration of the land. Maps will be prepared and certified according to R645-301-512.

521.160. Maps and Cross Sections of the Proposed Features for the Proposed Permit Area. These maps and cross sections will clearly show:

521.161. Buildings, utility corridors, and facilities to be used;

521.162. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

521.163. Each area of land for which a performance bond or other equivalent guarantee will be posted under R645-301-800;

521.164. Each coal storage, cleaning and loading area. The map will be prepared and certified according to R645-301-512;

521.165. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area. The map will be prepared and certified according to R645-301-512;

521.166. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

521.167. Each explosive storage and handling facility;

521.168. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, each air pollution collection and control facility; and

521.169. Each proposed coal processing waste bank, dam, or embankment. The map will be prepared and certified according to R645-301-512.

521.170. Transportation Facilities Maps. Each permit application will describe each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description will include a map, appropriate cross sections, and specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, drainage structure, and each stream ford that is used as a temporary route.

521.180. Support facilities. Each permit applicant will submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings will include a map, appropriate cross sections, design drawings, and specifications to demonstrate compliance with R645-301-526.220 through R645-301-526.222 for each facility.

521.190. Other relevant information required by the Division.

521.200. Signs and Markers Specifications. Signs and markers will:

521.210. Be posted, maintained, and removed by the person who conducts the coal mining and reclamation operations;

521.220. Be a uniform design that can be easily seen and read; be made of durable material; and conform to local laws and regulations;

521.230. Be maintained during all activities to which they pertain;

521.240. Mine and Permit Identification Signs.

521.241. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, identification

signs will be displayed at each point of access from public roads to areas of surface operations and facilities on permit areas;

521.242. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, identification signs will be displayed at each point of access to the permit area from public roads;

521.243. Show the name, business address, and telephone number of the permittee who conducts coal mining and reclamation operations and the identification number of the permanent program permit authorizing coal mining and reclamation operations; and

521.244. Be retained and maintained until after the release of all bonds for the permit area;

521.250. Perimeter Markers.

521.251. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the perimeter of all areas affected by surface operations or facilities before beginning mining activities will be clearly marked; or

521.252. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, the perimeter of a permit area will be clearly marked before the beginning of surface mining activities;

521.260. Buffer Zone Markers.

521.261. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, signs will be erected to mark buffer zones as required under R645-301-731.600 and will be clearly marked to prevent disturbance by surface operations and facilities; or

521.262. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, buffer zones will be marked along their boundaries as required under R645-301-731.600; and

521.270. Topsoil Markers. Markers will be erected to mark where topsoil or other vegetation-supporting material is physically segregated and stockpiled as required under R645-301-234.

522. Coal Recovery. The permit application will include a description of the measures to be used to maximize the use and conservation of the coal resource. The description will assure that coal mining and reclamation operations are conducted so as to maximize the utilization and conservation of the coal, while utilizing the best technology currently available to maintain environmental integrity, so that re-affecting the land in the future through coal mining and reclamation operations is minimized.

523. Mining Method(s). Each application will include a description of the mining operation proposed to be conducted during the life of the mine within the proposed permit area, including, at a minimum, a narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage and the major equipment to be used for all aspects of those operations.

523.100. SURFACE COAL MINING AND RECLAMATION ACTIVITIES proposed to be conducted within the permit area within 500 feet of an underground mine will be described to indicate compliance with R645-301-523.200.

523.200. No SURFACE COAL MINING AND RECLAMATION ACTIVITIES will be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that:

523.210. The operations result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public; and

523.220. The nature, timing, and sequence of the activities that propose to mine closer than 500 feet to an active underground mine are jointly approved by the Division and MSHA.

524. Blasting and Explosives. For the purposes of

SURFACE COAL MINING AND RECLAMATION ACTIVITIES, each permit application will contain a blasting plan for the proposed permit area explaining how the applicant will comply with R645-301-524. This plan will include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations. Each blasting plan will also contain a description of any system to be used to monitor compliance with the standards of R645-301.524.600 including the type, capability, and sensitivity of any blast-monitoring equipment and proposed procedures and locations of monitoring. Blasting operations conducted within 500 feet of active underground mines require approval of MSHA. Blasts that use more than five pounds of explosive or blasting agent will be conducted according to the schedule required under R645-301-524.400. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, R645-301-524.100 through R645-301-524.700 apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

524.100. Blaster Certification. The steps taken to achieve compliance with the blaster certification program must be described in the permit application.

524.110. After July 28, 1987, all surface blasting operations incident to underground mining in Utah will be conducted under the direction of a certified blaster.

524.120. Certificates of blaster certification will be carried by blasters or will be on file at the permit area during blasting operations.

524.130. A blaster and at least one other person will be present at the firing of a blast.

524.140. Persons responsible for blasting operations at a blasting site will be familiar with the blasting plan and site-specific performance standards and give on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

524.200. Unless approved by the Division under R645-301-524.220, the blast design must be described in the permit application. The design requirements are:

524.210. An anticipated blast design will be submitted for all blasts if blasting operations will be conducted within:

524.211. 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

524.212. 500 feet of an active or abandoned underground mine;

524.220. The blast design may be presented as part of a permit application or at a time, before the blast, if approved by the Division;

524.230. The blast design will contain sketches of the drill patterns, delay periods, and decking and will indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in R645-301-524.600;

524.240. The blast design will be prepared and signed by a certified blaster; and

524.250. The Division may require changes to the design submitted.

524.300. The preblasting survey must be described in the permit application. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES preblasting surveys are required for blasts that use more than five pounds of blasting agent or explosives. The requirements are:

524.310. At least 30 days before initiation of blasting, the

operator will notify, in writing, all residents or owners of dwellings or other structures located within one-half mile of the permit area how to request a preblasting survey;

524.320. A resident or owner of a dwelling or structure within one-half mile of any part of the permit area may request a preblasting survey. This request will be made, in writing, directly to the operator or to the Division, who will promptly notify the operator. The operator will promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations will be performed by the operator if requested by the resident or owner;

524.330. The operator will determine the condition of the dwelling or structure and will document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data;

524.340. The written report of the survey will be signed by the person who conducted the survey. Copies of the report will be promptly provided to the Division and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he or she may submit to both the operator and the Division a detailed description of the specific areas of disagreement; and

524.350. Any surveys requested more than ten days before the planned initiation of blasting will be completed by the operator before the initiation of blasting.

524.400. The schedule of blasts will be described in the permit application:

524.410. Unscheduled blasts may be conducted only where public or operator health and safety so requires and for emergency blasting actions. When an operator conducts an unscheduled surface blast incidental to coal mining and reclamation operations, the operator, using audible signals, will notify residents within one-half mile of the blasting site and document the reason in accordance with R645-301-524.760;

524.420. All blasting will be conducted between sunrise and sunset unless nighttime blasting is approved by the Division based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The Division may specify more restrictive time periods for blasting;

524.430. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the operator will notify, in writing, residents within one-half mile of the blasting site and local governments of the proposed times and locations of blasting operations. Such notice of times that blasting is to be conducted may be announced weekly, but in no case less than 24 hours before blasting will occur;

524.440. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, the operator will conduct blasting operations at times approved by the Division and announced in the blasting schedule. The Division may limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare;

524.450. Blasting Schedule Publication and Distribution. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the operator will:

524.451. Publish the blasting schedule in a newspaper of general circulation in the locality of the blasting site at least ten days, but not more than 30 days, before beginning a blasting program;

524.452. Distribute copies of the schedule to local governments and public utilities and to each local residence within one-half mile of the proposed blasting site described in

the schedule; and

524.453. Republish and redistribute the schedule at least every 12 months and revise and republish the schedule at least ten days, but not more than 30 days, before blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from the prior announcement; and

524.460. Blasting Schedule Contents. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the blasting schedule will contain, at a minimum:

524.461. Name, address, and telephone number of operator;

524.462. Identification of the specific areas in which blasting will take place;

524.463. Dates and time periods when explosives are to be detonated;

524.464. Methods to be used to control access to the blasting area; and

524.465. Type and patterns of audible warning and all-clear signals to be used before and after blasting.

524.500. The blasting signs, warnings, and access control must be described in the permit application.

524.510. Blasting Signs. Blasting signs will meet the specifications of R645-301-521.200. The operator will:

524.511. Conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public-road right-of-way, and at the point where any other road provides access to the blasting area; and

524.512. At all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use", which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

524.520. Warnings. Warning and all-clear signals of different character or pattern that are audible within a range of one-half mile from the point of the blast will be given. Each person within the permit area and each person who resides or regularly works within one-half mile of the permit area will be notified of the meaning of the signals in the blasting schedule for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES and blasting notification required by R645-301-524.430 for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

524.530. Access Control. Access within the blasting areas will be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that:

524.531. No unusual hazards, such as imminent slides or undetonated charges, exist; and

524.532. Access to and travel within the blasting area can be safely resumed.

524.600. The control of adverse blasting effects must be described in the permit application. The requirements are:

524.610. General Requirements. Blasting will be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

524.620. Airblast Limits.

524.621. Airblast will not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in R645-301-524.690.

TABLE

Lower Frequency Limit of Measuring System, HZ(+3dB)	Maximum Level dB
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0.1 Hz or lower - flat response(1)	134 peak
2 Hz or lower - flat response	133 peak
6 Hz or lower - flat response	129 peak
C-weighted - slow response(1)	105 peak dBC

(1) Only when approved by the Division.

524.622. If necessary to prevent damage, the Division may specify lower maximum allowable airblast levels than those of R645-301-524.621 for use in the vicinity of a specific blasting operation.

524.630. Monitoring.

524.631. The operator will conduct periodic monitoring to ensure compliance with the airblast standards. The Division may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

524.632. The measuring systems used will have an upper-end flat-frequency response of at least 200 Hz.

524.633. Flyrock. Flyrock traveling in the air or along the ground will not be cast from the blasting site - more than one-half the distance to the nearest dwelling or other occupied structure; beyond the area of control required under R645-301-524.530; or beyond the permit boundary.

524.640. Ground Vibration.

524.641. General. In all blasting operations, except as otherwise authorized in R645-301-524.690, the maximum ground vibration will not exceed the values approved by the Division. The maximum ground vibration for protected structures listed in R645-301-524.642 will be established in accordance with either the maximum peak-particle-velocity limits of R645-301-524.642 and R645-301-524.643, the scaled-distance equation of R645-301-524.650, the blasting-level chart of R645-301-524.660, or by the Division under R645-301-524.670. All structures in the vicinity of the blasting area, not listed in R645-301-524.642, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines will be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator and approved by the Division before the initiation of blasting.

524.642. Maximum Peak-Particle Velocity. The maximum ground vibration will not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

TABLE			
EXPLOSIVES	Distance (D) from Blast Site in feet	Maximum allowable Particle Velocity (Vmax) for ground vibration, in inches/second(1)	Scaled distance factor to be applied without seismic monitoring(2) (Ds)
	0 to 300	1.25	50
	301 to 5,000	1.00	55
	5,001 and beyond	0.75	65

(1) Ground vibration will be measured as the particle velocity. Particle velocity will be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity will apply to each of the three measurements.

(2) Applicable in the scaled-distance equation of R645-301-524.651.

524.643. A seismographic record will be provided for each blast.

524.650. Scaled-distance equation.

524.651. An operator may use the scaled-distance equation, $W = (D/Ds)^2$, to determine the allowable charge weight of explosives to be detonated in any eight-millisecond period, without seismic monitoring: where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and Ds = the

scaled-distance factor, which may initially be approved by the Division using the values for scaled-distance factor listed in R645-301-524.642.

524.652. The development of a modified scaled-distance factor may be authorized by the Division on receipt of a written request by the operator, supported by seismographic records of blasting at the mine site. The modified scaled-distance factor will be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of R645-301-524.642, at a 95-percent confidence level.

524.660. Blasting-Level-Chart.

524.661. An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

(Figure 1, showing maximum allowable ground particle velocity at specified frequencies, is incorporated by reference. Figure 1 may be viewed at 30 CFR 817.67 or at the Division of Oil, Gas and Mining State Office.)

524.662. If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels will be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records will be approved by the Division before application of this alternative blasting criterion.

524.670. The maximum allowable ground vibration will be reduced by the Division beyond the limits otherwise provided R645-301-524.640, if determined necessary to provide damage protection.

524.680. The Division may require an operator to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

524.690. The maximum airblast and ground-vibration standards of R645-301-524.620 through R645-301-524.632 and R645-301-524.640 through R645-301-524.680 will not apply at the following locations: At structures owned by the permittee and not leased to another person; and at structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the Division before blasting.

524.700. Records of Blasting Operations. The permit application will incorporate a description of the blasting records to be maintained at the mine site for at least three years and upon request, make blasting records available for inspection by the Division or the public. Blasting records will contain the following information:

524.710. A record, including:

524.711. Name of the operator conducting the blast;

524.712. Location, date, and time of the blast; and

524.713. Name, signature, and certification number of the blaster conducting the blast; and

524.720. Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in R645-301-524.690;

524.730. Weather conditions, including those which may cause possible adverse blasting effects;

524.740. A record of the blast, including:

524.741. Type of material blasted;

524.742. Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern;

524.743. Diameter and depth of holes;

524.744. Types of explosives used;

524.745. Total weight of explosives used per hole;

524.746. The maximum weight of explosives detonated in an eight-millisecond period;

524.747. Initiation system;

524.748. Type and length of stemming; and

524.749. Mats or other protections used;
524.750. If required, a record of seismographic and airblast information, which will include:

524.751. Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

524.752. Exact location of instrument and the date, time, and distance from the blast;

524.753. Name of the person and firm taking the reading;

524.754. Name of the person and firm analyzing the seismographic record; and

524.755. The vibration and/or airblast level recorded; and

524.760. The reasons and conditions for each unscheduled blast.

524.800. Each operator will comply with all appropriate Utah and federal laws and regulations in the use of explosives.

525. Subsidence control plan.

525.100. Pre-subsidence survey. Each application for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will include:

525.110. A map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the Division, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of State-appropriated water that could be contaminated, diminished, or interrupted by subsidence.

525.120. A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt State-appropriated water supplies.

525.130. A survey of the condition of all non-commercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw; as well as a survey of the quantity and quality of all State-appropriated water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner, in writing, of the effect that denial of access will have as described in R645-301-525. The applicant must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of such non-commercial buildings or occupied residential dwellings and structures related thereto and the quantity and quality of State-appropriated water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner, the water conservancy district, if any, where the mine is located, and to the Division.

525.200. Protected areas.

525.210. Unless excepted by R645-301-525.213, UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will not be conducted beneath or adjacent to:

525.211. Public buildings and facilities;

525.212. Churches, schools, and hospitals;

525.213. Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities; and

525.214. If the Division determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

525.220. If subsidence causes material damage to any of the features or facilities covered by R645-301-525.210, the Division may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

525.230. The Division will suspend coal mining and reclamation operations under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

525.240. Within a schedule approved by the Division, the operator will submit a detailed plan of the underground workings. The detailed plan will include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measure taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the Division. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of R645-300-124.

525.300. Subsidence control.

525.310. Measures to prevent or minimize damage.

525.311. The permittee will either adopt measures consistent with known technology that prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands or adopt mining technology that provides for planned subsidence in a predictable and controlled manner.

525.312. If a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee must take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to non-commercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damage to such structures are not required if:

525.312.1. The permittee has the written consent of their owners or

525.312.2. Unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair.

525.313. Nothing in this part prohibits the standard method of room-and-pillar mining.

525.400. Subsidence control plan contents. If the survey conducted under R645-301-525.100 shows that no structures, or State-appropriated water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, and no contamination, diminution, or interruption of such water supplies would occur as a result of mine subsidence, and if the Division agrees with this conclusion, no further information need be provided under this section. If the survey shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution, or interruption of state-appropriated water supplies, or if the Division determines that damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application must include a subsidence control plan that contains the following information:

525.410. A description of the method of coal removal, such as longwall mining, room-and-pillar removal or hydraulic mining, including the size, sequence and timing of the development of underground workings;

525.420. A map of the underground workings that describes the location and extent of the areas in which planned-subsidence mining methods will be used and that identifies all areas where the measures described in 525.440, 525.450, and 525.470 will be taken to prevent or minimize subsidence and subsidence-related damage; and, when applicable, to correct subsidence-related material damage;

525.430. A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying strata, that affect the likelihood or extent of subsidence and subsidence-related damage;

525.440. A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with R645-301-525.500;

525.450. Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, such as, but not limited to:

525.451. Backstowing or backfilling of voids;

525.452. Leaving support pillars of coal;

525.453. Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place; and

525.454. Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface;

525.460. A description of the anticipated effects of planned subsidence, if any;

525.470. For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to non-commercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair;

525.480. A description of the measures to be taken in accordance with R645-301-731.530 and R645-301-525.500 to replace adversely affected State-appropriated water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures; and

525.490. Other information specified by the Division as necessary to demonstrate that the operation will be conducted in accordance with R645-301-525.300.

525.500. Repair of damage.

525.510. Repair of damage to surface lands. The permittee must correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence damage.

525.520. Repair or compensation for damage to non-commercial buildings and dwellings and related structures. The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If repair option is selected, the permittee must fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The permittee may provide compensation by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy. The requirements of this paragraph apply only to subsidence-related

damage caused by underground coal mining and reclamation activities conducted after October 24, 1992.

525.530. Repair or compensation for damage to other structures. The permittee shall either correct material damage resulting from subsidence caused to any structures or facilities not protected by paragraph 525.520 by repairing the damage or compensate the owner of the structures or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a non-cancelable premium-prepaid insurance policy.

525.540. Rebuttable presumption of causation by subsidence.

525.541. Rebuttable presumption of causation for damage within angle of draw. If damage to any non-commercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting an angle of draw equal to that used for that particular mine's compliance with R645-301 from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption exists that the permittee caused the damage. This presumption will normally apply to a 30 degree angle of draw from the vertical, however, the Division may amend the applicable angle of draw for a particular mine through the process described in R645-301-525.542.

525.542. Approval of site-specific angle of draw. A permittee or permit applicant may request that the presumption apply to an angle of draw different than 30 degrees. To establish a site-specific angle of draw, an applicant must demonstrate and the Division must determine in writing that the proposed angle of draw has a more reasonable basis than 30 degrees and is based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation.

525.543. No presumption where access for pre-subsidence survey is denied. If the permittee was denied access to the land or property for the purpose of conducting the pre-subsidence survey in accordance with R645-301-525.130 no rebuttable presumption will exist.

525.544. Rebuttal of presumption. The presumption will be rebutted if, for example, the evidence establishes that: The damage predated the mining in question; the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence; or the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.

525.545. Information to be considered in determination of causation. In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the Division.

525.550. Adjustment of bond amount for subsidence damage. When subsidence-related material damage to land, structures or facilities protected under R645-301-525.500 through R645-301-525.530 occurs, or when contamination, diminution, or interruption to a water supply protected under Sec. R645-301-731.530 occurs, the Division must require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, or in the amount of the estimated cost to replace the State-appropriated water supply if the permittee will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The Division may extend the 90-day time frame, but not to exceed one year, if the permittee demonstrates and the Division finds in writing that subsidence is not complete, that not all probable

subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the State-appropriated water supply, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of State-appropriated water supply.

525.600. Compliance. The operator will comply with all provisions of the approved subsidence control plan.

525.700. Public Notice of Proposed Mining. At least six months prior to mining, or within that period if approved by the Division, the underground mine operator will mail a notification to the water conservancy district, if any, in which the mine is located and to all owners and occupants of surface property and structures above the underground workings. The notification will include, at a minimum, identification of specific areas in which mining will take place, dates that specific areas will be undermined, and the location or locations where the operator's subsidence control plan may be examined.

526. Mine Facilities. The permit application will include a narrative explaining the construction, modification, use, maintenance and removal of the following facilities (unless retention of such facility is necessary for the postmining land use as specified under R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900):

526.100. Mine Structures and Facilities.

526.110. Existing Structures. A description of each existing structure proposed to be used in connection with or to facilitate the coal mining and reclamation operation. The description will include:

526.111. Location;

526.112. Plans or photographs of the structure which describe or show its current condition;

526.113. Approximate dates on which construction of the existing structure was begun and completed;

526.114. A showing, including relevant monitoring data or other evidence, how the structure meets the requirements of R645-301;

526.115. A compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate coal mining and reclamation operations. The compliance plan will include:

526.115.1. Design specifications for the modification or reconstruction of the structure to meet the design standards of R645-301;

526.115.2. A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

526.115.3. A schedule for monitoring the structure during and after modification or reconstruction to ensure that the requirements of R645-301 are met; and

526.115.4. A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

526.116. The measures to be used to ensure that the interests of the public and landowners affected are protected if the applicant seeks to have the Division approve:

526.116.1. Conducting the proposed coal mining and reclamation operations within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

526.116.2. Relocating a public road;

526.200. Utility Installation and Support Facilities.

526.210. The utility installations description must state that all coal mining and reclamation operations will be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines, railroads; electric and telephone

lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the Division.

526.220. The support facilities description must state that support facilities will be operated in accordance with a permit issued for the mine or coal preparation plant to which it is incident or from which its operation results. Plans and drawings for each support facility to be constructed, used, or maintained within the proposed permit area will include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate how each facility will comply with applicable performance standards. In addition to the other provisions of R645-301, support facilities will be located, maintained, and used in a manner that:

526.221. Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and

526.222. To the extent possible using the best technology currently available - minimizes damage to fish, wildlife, and related environmental values; and minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions will not be in excess of limitations of Utah or Federal law;

526.300. Water pollution control facilities; and

526.400. For SURFACE COAL MINING AND RECLAMATION ACTIVITIES, air pollution control facilities.

527. Transportation Facilities.

527.100. The plan must classify each road.

527.110. Each road will be classified as either a primary road or an ancillary road.

527.120. A primary road is any road which is:

527.121. Used for transporting coal or spoil;

527.122. Frequently used for access or other purposes for a period in excess of six months; or

527.123. To be retained for an approved postmining land use.

527.130. An ancillary road is any road not classified as a primary road.

527.200. The plan must include a detailed description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description will include a map, appropriate cross sections, and the following:

527.210. Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

527.220. Measures to be taken to obtain Division approval for alteration or relocation of a natural drainageway under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-527.240, R645-301-534.100, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, and R645-301-752.200;

527.230. A maintenance plan describing how roads will be maintained throughout their life to meet the design standards throughout their use.

527.240. A commitment that if a road is damaged by a catastrophic event, such as a flood or earthquake, the road will be repaired as soon as practical after the damage has occurred.

527.250. A report of appropriate geotechnical analysis, where approval of the Division is required for alternative specifications, or for steep cut slopes.

528. Handling and Disposal of Coal, Overburden, Excess Spoil, and Coal Mine Waste. The permit application will include a narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facility is necessary for the postmining land use as specified under R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900):

528.100. Coal removal, handling, storage, cleaning, and transportation areas and structures;

528.200. Overburden;

528.300. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

528.310. Excess Spoil. Excess spoil will be placed in designated disposal areas within the permit area, in a controlled manner to ensure mass stability and prevent mass movement during and after construction. Excess spoil will meet the design criteria of R645-301-535. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, the permit application must include a description of the proposed disposal site and the design of the spoil disposal structures according to R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

528.320. Coal Mine Waste. All coal mine waste will be placed in new or existing disposal areas within a permit area which are approved by the Division for this purpose. Coal mine waste will meet the design criteria of R645-301-536, however, placement of coal mine waste by end or side dumping is prohibited.

528.321. Return of Coal Processing Waste to Abandoned Underground Workings. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, each plan will describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the Division and MSHA under R645-301-536.520 and meet the design criteria of R645-301-536.700.

528.322. Refuse Piles. Each pile will meet the requirements of MSHA, 30 CFR 77.214 and 30 CFR 77.215, meet the design criteria of R645-301-210, R645-301-512.230, R645-301-513.400, R645-301-514.200, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-536.900, R645-301-542.730, R645-301-553.250, R645-301-746.100, R645-301-746.200, and any other applicable requirements.

528.323. Burning and Burned Waste Utilization.

528.323.1. Coal mine waste fires will be extinguished by the person who conducts coal mining and reclamation operations, in accordance with a plan approved by the Division and MSHA. The plan will contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, will be involved in the extinguishing operations.

528.323.2. No burning or burned coal mine waste will be removed from a permitted disposal area without a removal plan approved by the Division. Consideration will be given to potential hazards to persons working or living in the vicinity of the structure.

528.330. Noncoal Mine Waste.

528.331. Noncoal mine wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities will be placed and stored in a controlled manner in a designated portion of the permit area.

528.332. Final disposal of noncoal mine wastes will be in a designated disposal site in the permit area or a State-approved solid waste disposal area. Disposal sites in the permit area will be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes will be routinely compacted and

covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two feet of soil cover will be placed over the site, slopes, stabilized, and revegetation accomplished in accordance with R645-301-244.200 and R645-301-353 through R645-301-357. Operation of the disposal site will be conducted in accordance with all local, Utah, and Federal requirements.

528.333. At no time will any noncoal mine waste be deposited in a refuse pile or impounding structure, nor will any excavation for a noncoal mine waste disposal site be located within eight feet of any coal outcrop or coal storage area.

528.334. Notwithstanding any other provision to the R645 Rules, any noncoal mine waste defined as "hazardous" under 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, as amended) and 40 CFR Part 261 will be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

528.340. Underground Development Waste. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES the permit application must include a description of the proposed disposal methods for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities according to R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-536.300, R645-301-536.600, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

528.350. The permit application will include a description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with R645-301-528.330, R645-301-537.200, R645-301-542.740, R645-301-553.100 through R645-301-553.600, R645-301-553.900, and R645-301-747 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials; and

528.400. Dams, embankments and other impoundments.

529. Management of Mine Openings. The permit application will include a description of the measures to be used to seal or manage mine openings within the proposed permit area.

529.100. Each shaft or other exposed underground opening will be cased, lined, or otherwise managed as approved by the Division. If these openings are uncovered or exposed by coal mining and reclamation operations within the permit area they will be permanently closed unless approved for water monitoring or otherwise managed in a manner approved by the Division.

529.200. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES:

529.210. Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, will be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices will be periodically inspected and maintained in good operating condition by the person who conducts the activity.

529.220. Each shaft and underground opening which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings will be temporarily sealed until actual use.

529.300. R645-301-529 does not apply to holes drilled and used for blasting, in the area affected by surface operations.

529.400. For the purposes of SURFACE COAL MINING

AND RECLAMATION ACTIVITIES, each exposed underground opening which has been identified in the approved permit application for use to return coal processing waste to underground workings will be temporarily sealed before use and protected during use by barricades, fences, or other protective devices approved by the Division. These devices will be periodically inspected and maintained in good operating condition by the person who conducts the activity.

530. Operational Design Criteria and Plans.

531. General. Each permit application will include a general plan and detailed design plans for each proposed siltation structure, water impoundment, and coal processing waste bank, dam or embankment within the proposed permit area. Each general plan will describe the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations, if underground mining has occurred.

532. Sediment Control. The permit application will describe designs for sediment control. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas will reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

532.100. Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in R645-301-353.200; and

532.200. Stabilizing the backfilled material to promote a reduction of the rate and volume of runoff in accordance with the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600, and R645-301-553.900.

533. Impoundments.

533.100. An Impoundment meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR Sec. 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and have a seismic safety factor of at least 1.2.

533.110 Impoundments not included in 533.100, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of R645-301-733.210.

533.200. Foundations. Foundations for temporary and permanent impoundments must be designed so that:

533.210. Foundations and abutments for an impounding structure are stable during all phases of construction and operation and are designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR Sec. 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability; and

533.220. All vegetative and organic materials will be removed and foundations excavated and prepared to resist failure. Cutoff trenches will be installed if necessary to ensure stability.

533.300. Slope protection will be provided to protect against surface erosion at the site and protect against sudden drawdown.

533.400. Faces of embankments and surrounding areas will be vegetated except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

533.500. The vertical portion of any remaining highwall will be located far enough below the low-water line along the full extent of highwall to provide adequate safety and access for the proposed water users.

533.600. Impoundments meeting the criteria of MSHA, 30 CFR 77.216(a) will comply with the requirements of MSHA, 30 CFR 77.216 and R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will also be submitted to the Division as part of the permit application.

533.610. Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR-60) shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). The document entitled "Earth Dams and Reservoirs", published in October, 1985, is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-157509/AS. Copies may be inspected at the Division of Oil Gas and Mining Offices, 1594 West North Temple, Salt Lake City, Utah 84114 or at the Division of Administrative Rules, Archives Building, Capitol Hill Complex, Salt Lake City, Utah 84114-1021. Each detailed design plan for a structure that meets or exceeds the size or other criteria of MSHA, 30 CFR Sec. 77.216(a), shall:

533.611 Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

533.612 Include any geotechnical investigation, design, and construction requirements for the structure;

533.613 Describe the operation and maintenance requirements for each structure; and

533.614 Describe the timetable and plans to remove each structure, if appropriate.

533.620. If the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR Sec. 77.216(a), each plan under R645-301-742.200, 733.200, or 536.820 shall include a stability analysis of the structure. The stability analysis shall at a minimum include strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

533.700. Plans.

533.710 Each detailed design plan for structures not included in 533.610 shall:

533.711 Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, except that all coal processing waste dams and embankments covered by R645-301-536 and R645-301-746.200 shall be certified by a qualified, registered, professional engineer;

533.712 Include any design and construction requirements for the structure, including any required geotechnical information;

533.713 Describe the operation and maintenance requirements for each structure; and

533.714 Describe the timetable and plans to remove each structure, if appropriate.

534. Roads. The permit application will describe designs for roads.

534.100. Roads will be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

534.110. Prevent or control damage to public or private property;

534.120. Use nonacid- or nontoxic-forming substances in road surfacing; and

534.130. Have, at a minimum, a static safety factor of 1.3 for all embankments.

534.140. Have a schedule and plan to remove and reclaim each road that would not be retained under an approved postmining land use.

534.150. Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.

534.200. To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and reconstruction of roads will incorporate appropriate limits for grade, width, surface materials, and any necessary design criteria established by the Division.

534.300. Primary Roads. Primary roads will meet the requirements of R645-301-358, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-542.600, R645-301-542.600, and R645-301-762, any necessary design criteria established by the Division, and the following requirements. Primary roads will:

534.310. Be located, insofar as practical, on the most stable available surfaces;

534.320. Be surfaced with rock, crushed gravel, asphalt, or other material approved by the Division as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road;

534.330. Be routinely maintained to include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. It will also include revegetation, brush removal, and minor reconstruction of road segments as necessary; and

534.340. Have culverts that are designed, installed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

535. Spoil. The permit application will describe designs for spoil placement and disposal.

535.100. Disposal of Excess Spoil. Excess spoil will be placed in designated disposal areas within the permit area in a controlled manner. The fill and appurtenant structures will be designed using current, prudent engineering practices and will meet any design criteria established by the Division.

535.110. The fill will be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction. The fill will:

535.111. Be located on the most moderately sloping and naturally stable areas available, as approved by the Division, and be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

535.112. Be the subject of sufficient foundation investigations. Any necessary laboratory testing of foundation material, will be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions will take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures; and

535.113. Incorporate keyway cuts (excavations to stable bedrock) or rock toe buttresses to ensure stability where the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the Division based on local conditions. Where the toe of the spoil rests on a downslope, stability analyses will be performed in accordance

with R645-301-535.150 to determine the size of rock toe buttresses and keyway cuts.

535.120. Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the Division and MSHA under R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243.

535.130. Placement of Excess Spoil. Excess spoil will be transported and placed in a controlled manner in horizontal lifts not exceeding four feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243. The Division may approve a design which incorporates placement of excess spoil in horizontal lifts other than four feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

535.140. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the design of the spoil disposal structure will include the results of geotechnical investigations as follows:

535.141. The character of bedrock and any adverse geologic conditions in the disposal area;

535.142. A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site;

535.143. A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

535.144. A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

535.145. A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data will be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

535.150. If for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, under R645-301-535.112 and R645-301-535.113, rock-toe buttresses or keyway cuts are required, the application will include the following:

535.151. The number, location, and depth of borings or test pits which will be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

535.152. Engineering specifications utilized to design the rock-toe buttress or keyway cuts which will be determined in accordance with R645-301-535.145.

535.200. Disposal of Excess Spoil: Valley Fills/Head-of-Hollow Fills. Valley fills and head-of-hollow fills will meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100, and these additional requirements.

535.210. Rock-core chimney drains may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams or ephemeral streams that drain a watershed of at least one square mile. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill.

535.220. The alternative rock-core chimney drain system will be incorporated into the design and construction of the fill as follows:

535.221. The fill will have along the vertical projection of the main buried channel or rill a vertical core of durable rock at least 16 feet thick which will extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains will connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and rock core will be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains will meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400;

535.222. A filter system to ensure the proper long-term functioning of the rock core will be designed and constructed using current, prudent engineering practices; and

535.223. Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams or ephemeral streams that drain a watershed of at least one square mile be diverted into the rock core. The maximum slope of the top of the fill will be 33h:1v (three percent). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case will this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terraces on the fill will be graded with a three to five percent grade toward the fill and a one percent slope toward the rock core.

535.300. Disposal of Excess Spoil: Durable Rock Fills. The Division may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided that:

535.310. Except as provided under R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400 are met;

535.320. The excess spoil consists of at least 80 percent, by volume, durable, nonacid- and nontoxic-forming rock (e.g., sandstone or limestone) that does not slake in water and will not degrade to soil material. Where used, noncemented clay shale, clay spoil, soil or other nondurable excess spoil material will be mixed with excess durable rock spoil in a controlled manner such that no more than 20 percent of the fill volume, as determined by tests performed by a registered engineer and approved by the Division, is not durable rock;

535.330. The fill is designed to attain a minimum long-term static safety factor of 1.5, and an earthquake safety factor of 1.1; and

535.340. The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met.

535.400. Disposal of Excess Spoil: Preexisting Benches. Disposal of excess spoil on preexisting benches may be

approved by the Division provided that R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-535.400, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, and R645-301-745.400 are met, and the following requirements:

535.410. Excess spoil will be placed only on the solid portion of the preexisting bench;

535.420. The fill will be designed, using current, prudent engineering practices, to attain a long-term static safety factor of 1.3 for all portions of the fill;

535.430. The preexisting bench will be backfilled and graded to: Achieve the most moderate slope possible which does not exceed the angle of repose, and eliminate the highwall to the maximum extent technically practical; and

535.440. Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the Division provided that:

535.441. The gravity transport courses are determined on a site-specific basis by the operator as part of the permit application and approved by the Division to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

535.442. All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

535.443. A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm; and

535.444. Excess spoil will not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243. Upon completion of the fill, no excess spoil will be allowed to remain on the designated gravity transport course between the two benches and each transport course will be reclaimed in accordance with the requirements of R645-301 and R645-302.

535.500. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, spoil resulting from faceup operations for underground coal mine development may be placed at drift entries as part of a cut and fill structure, if the structure is less than 400 feet in horizontal length, and designed in accordance with R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

536. Coal Mine Waste. The permit application will include designs for placement of coal mine waste in new or existing disposal areas within approved portions of the permit area. Coal mine waste will be placed in a controlled manner and have a design certification as described under R645-301-512.

536.100. The disposal facility will be designed using

current prudent engineering practices and will meet design criteria established by the Division.

536.110. The disposal facility will be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.

536.120. Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, will be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions will take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

536.200. Coal mine waste will be placed in a controlled manner to:

536.210. Ensure mass stability and prevent mass movement during and after construction;

536.220. Not create a public hazard; and

536.230. Prevent combustion.

536.300. Coal mine waste may be disposed of in excess spoil fills if approved by the Division and, if such waste is:

536.310. Placed in accordance with applicable portions of R645-301-210, R645-301-513.400, R645-301-514.200, R645-301-528.322, R645-301-536.900, R645-301-553.250, and R645-301-746.200;

536.320. Nontoxic and nonacid forming; and

536.330. Of the proper characteristics to be consistent with the design stability of the fill.

536.400. New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste will meet the requirements of R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100.

536.410. Coal mine waste will not be used for construction of impounding structures unless it has been demonstrated to the Division that the stability of such a structure conforms to the requirements of R645-301 and R645-302.

536.420. The stability of the structure will be discussed in detail in the design plan submitted to the Division in accordance with R645-301-512.100, R645-301-512.230, R645-301-521.169, R645-301-531, R645-301-533.600, R645-301-533.700, R645-301-536.800, R645-301-542.500, R645-301-732.210, and R645-301-733.100.

536.500. Disposal of Coal Mine Waste in Special Areas.

536.510. Coal mine waste materials from activities located outside a permit area may be disposed of in the permit area only if approved by the Division. Approval will be based upon a showing that such disposal will be in accordance with R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100.

536.520. Underground Disposal. Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the Division and MSHA under R645-301-513.300, R645-301-528.321, R645-301-536.700, and R645-301-746.400.

536.600. Underground Development Waste. Each plan will describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100, through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

536.700. Coal Processing Waste. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, each plan for returning coal processing waste to

abandoned underground workings will describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

536.800. Coal processing waste banks, dams, and embankments will be designed to comply with:

536.810. R645-301-210, R645-301-512.230, R645-301-513.400, R645-301-514.200, R645-301-515.200, R645-301-528.322, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.400, R645-301-536.500, R645-301-536.900, R645-301-542.730, R645-301-553.250, and R645-301-746.100 through R645-301-746.300.

536.820. Coal processing waste dams and embankments will comply with the requirements of MSHA, 30 CFR 77.216-1 and 30 CFR 77.216-2, and will contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation will be planned and supervised by an engineer or engineering geologist, according to the following:

536.821. The number, location, and depth of borings and test pits will be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions;

536.822. The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions, which may affect the particular dam, embankment, or reservoir site will be considered;

536.823. All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment will be identified on each plan; and

536.824. Consideration will be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

536.900. Refuse Piles. Refuse piles will meet the requirements of R645-301-210, R645-301-512.230, R645-301-513.400, R645-301-514.200, R645-301-515.200, R645-301-528.322, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-536.900, R645-301-542.730, R645-301-553.250, R645-301-746.100 through R645-301-746.200, and the requirements of MSHA, 30 CFR 77.214 and 30 CFR 77.215.

537. Regraded Slopes.

537.100. Each application will contain a report of appropriate geotechnical analysis, where approval of the Division is required for alternative specifications or for steep cut slopes under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

537.200. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, regrading of settled and revegetated fills to achieve approximate original contour at the conclusion of mining operations will not be required if the following conditions are met.

537.210. Settled and revegetated fills will be composed of spoil or nonacid- or nontoxic-forming underground development waste.

537.220. The spoil or underground development waste will not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use.

537.230. Stability of the spoil or underground

development waste will be demonstrated through standard geotechnical analysis to be consistent with backfilling and grading requirements for material on the solid bench (1.3 static safety factor) or excess spoil requirements for material not placed on a solid bench (1.5 static safety factor).

537.240. The surface of the spoil or underground development waste will be vegetated according to R645-301-356 and R645-301-357, and surface runoff will be controlled in accordance with R645-301-742.300.

537.250. If it is determined by the Division that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health and safety of the public, the Division may allow the existing spoil or underground development waste pile to remain in place. The Division may require stabilization of such spoil or underground development waste in accordance with the requirements of R645-301-537.210 through R645-301-537.240.

540. Reclamation Plan.

541. General.

541.100. Persons who cease coal mining and reclamation operations permanently will close or backfill or otherwise permanently reclaim all affected areas, in accordance with the R645 Rules and the permit approved by the Division.

541.200. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, all underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the Division as suitable for the postmining land use or environmental monitoring, will be removed and the affected land reclaimed.

541.300. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, all surface equipment, structures, or other facilities not required for continued underground mining activities and monitoring, unless approved by the Division as suitable for the postmining land use or environmental monitoring will be removed and the affected lands reclaimed.

541.400. Each application will include a plan for the reclamation of the lands within the proposed permit area which shows how the applicant will comply with R645-301, and the environmental protection performance standards of the State Program.

542. Narratives, Maps and Plans. The reclamation plan for the proposed permit area will include:

542.100. A detailed timetable for the completion of each major step in the reclamation plan;

542.200. A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, and R645-302-234;

542.300. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, final surface configuration maps with cross sections (at intervals specified by the Division) that indicate:

542.310. The anticipated final surface configuration to be achieved for the affected areas. The maps and cross sections will be prepared and certified as described under R645-301-512; and

542.320. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of coal mining and reclamation operations;

542.400. Before abandoning a permit area or seeking bond release, a description ensuring all temporary structures are removed and reclaimed, and all permanent sedimentation ponds, impoundments and treatment facilities that meet the requirements of the R645 Rules for permanent structures, have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and

impoundments. The operator will renovate such structures if necessary to meet the requirements of the R645 Rules and to conform to the approved reclamation plan;

542.500. A timetable, and plans to remove each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment, if appropriate;

542.600. Roads. A road not to be retained for use under an approved postmining land use will be reclaimed immediately after it is no longer needed for mining and reclamation operations, including:

542.610. Closing the road to traffic;

542.620. Removing all bridges and culverts; unless approved as part of the postmining land use.

542.630. Scarifying or ripping of the roadbed and replacing topsoil and revegetating disturbed surfaces in accordance with R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, R645-301-243, R645-301-244.200 and R645-301-353 through R645-301-357.

542.640. Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements.

542.700. Final Abandonment of Mine Openings and Disposal Areas.

542.710. A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage other openings within the proposed permit area, in accordance with R645-301-529, R645-301-551, R645-301-631, R645-301-738, and R645-301-765.

542.720. Disposal of Excess Spoil. Excess spoil will be placed in designated disposal areas within the permit area, in a controlled manner to ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use. Excess spoil that is combustible will be adequately covered with noncombustible material to prevent sustained combustion. The reclamation of excess spoil will comply with the design criteria under R645-301-553.240.

542.730. Disposal of Coal Mine Waste. Coal mine waste will be placed in a controlled manner to ensure that the final disposal facility will be suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

542.740. Disposal of Noncoal Mine Wastes.

542.741. Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities will be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage will ensure that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

542.742. Final disposal of noncoal mine wastes will be in a designated disposal site in the permit area or a state-approved solid waste disposal area. Wastes will be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two feet of suitable cover will be placed over the site, slopes stabilized, and revegetation accomplished in accordance with R645-301-244.200 and R645-301-353 through R645-301-357, inclusive. Operation of the disposal site will be conducted in accordance with all local, Utah, and federal requirements.

542.800. The reclamation plan for the proposed coal mining and reclamation operations will also include a detailed estimate of reclamation costs as described in R645-301-830.100 - R645-301-830.300.

550. Reclamation Design Criteria and Plans. Each permit application will include site specific plans that incorporate the

following design criteria for reclamation activities.

551. Casing and Sealing of Underground Openings. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, each shaft, drift, adit, tunnel, drill hole, or other opening to the surface from underground will be capped, sealed and backfilled, or otherwise properly managed, as required by the Division and consistent with MSHA, 30 CFR 75.1711 and all other applicable state and federal regulations as soon as practical. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters. With respect to drill holes, unless otherwise approved by the Division, compliance with the requirements of 43 CFR 3484.1(a)(3) or R649-3-24 will satisfy these requirements.

552. Permanent Features.

552.100. Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

552.200. Permanent impoundments may be approved if they meet the requirements of R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-542.400, R645-301-733.220 through R645-301-733.224, R645-301-743, and if they are suitable for the approved postmining land use.

553. Backfilling and Grading. Backfilling and grading design criteria will be described in the permit application. Nothing in R645-301-553 will prohibit the placement of material in road and portal pad embankments located on the downslope, so long as the material used and the embankment design comply with the applicable requirements of R645-301-500 and R645-301-700 and the material is moved and placed in a controlled manner. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES rough backfilling and grading will follow coal removal by not more than 60 days or 1500 linear feet. The Division may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under R645-301-542.200, that additional time is necessary.

553.100. Disturbed Areas. Disturbed areas will be backfilled and graded to:

553.110. Achieve the approximate original contour (AOC), except as provided in R645-301-553.500 through R645-301-553.540 (previously mined areas (PMA's), continuously mined areas (CMA's) and areas subject to the AOC provisions), R645-301-553.600 through R645-301-553.612 (PMA's and CMA's), R645-302-270 (non-mountaintop removal on steep slopes), R645-302-220 (mountaintop removal mining), R645-301-553.700 (thin overburden) and R645-301-553.800 (thick overburden);

553.120. Eliminate all highwalls, spoil piles, and depressions, except as provided in R645-301-552.100 (small depressions); R645-301-553.500 through R645-301-553.540 (PMA's, CMA's and areas subject to approximate original contour (AOC) provisions; R645-301-553.600 through R645-301-553.612 (PMA's and CMA's); and in R645-301-553.650 (highwall management under the (AOC) provisions);

553.130. Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and prevents slides, except as provided in R645-301-553.530;

553.140. Minimize erosion and water pollution both on and off the site; and

553.150. Support the approved postmining land use.

553.200. Spoil and Waste. Spoil and waste materials will be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

553.210. Spoil, except as provided in R645-301-537.200

(Settled and Revegetated Fills), for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, and except where excess spoil is disposed of in accordance with R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400 will be returned to the mined out surface areas (UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES) or mined area (SURFACE COAL MINING AND RECLAMATION ACTIVITIES).

553.220. Spoil may be placed on the area outside the mined-out surface area (UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES) or in the mined-out area (SURFACE COAL MINING AND RECLAMATION ACTIVITIES) in non-steep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

553.221. All vegetative and organic material will be removed from the area;

553.222. The topsoil on the area will be removed, segregated, stored, and redistributed in accordance with R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243; and

553.223. The spoil will be backfilled and graded on the area in accordance with R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600, and R645-301-553.900.

553.230. Preparation of final graded surfaces will be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

553.240. The final configuration of the fill (excess spoil) will be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches will not be steeper than 2h:1v (50 percent).

553.250. Refuse Piles.

553.251. The final configuration for the refuse pile will be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches will not be steeper than 2h:1v (50 percent).

553.252. Following final grading of the refuse pile, the coal mine waste will be covered with a minimum of four feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The Division may allow less than four feet of cover material based on physical and chemical analyses which show that the requirements of R645-301-244.200 and R645-301-353 through R645-301-357 are met.

553.260. Disposal of coal processing waste and underground development waste in the mined-out surface area (UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES) or mined-out area (SURFACE COAL MINING AND RECLAMATION ACTIVITIES) will be in accordance with R645-301-210, R645-301-512.230, R645-301-513.400, R645-301-514.200, R645-301-515.200, R645-301-528.322, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-536.900, R645-301-542.730, R645-301-553.250, and R645-301-746.100 through R645-301-746.200, except that a long-term static safety factor of 1.3 will be achieved.

553.300. Exposed coal seams, acid- and toxic-forming

materials, and combustible materials exposed, used, or produced during mining will be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with R645-301-731.100 through R645-301-731.522 and R645-301-731.800, to prevent sustained combustion, and to minimize adverse effects on plant growth and on the approved postmining land use.

553.400. Cut-and-fill terraces may be allowed by the Division where:

553.410. Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or

553.420. Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

553.500. Previously Mined Areas (PMA's), Continuously Mined Areas (CMA's), and Areas with remaining Highwalls Subject to the Approximate Original Contour (AOC) Provisions.

553.510. Remining operations on PMA's, CMA's, or on areas with remaining highwalls subject to the AOC Provisions will comply with the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, and R645-302-234, except as provided in R645-301-553.500, R645-301-553.600 and R645-301-553.650.

553.520. The backfill of all remaining highwalls will be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

553.530. Any remaining highwall will be stable and not pose a hazard to the public health and safety or to the environment. The operator will demonstrate, to the satisfaction of the Division, that the remaining highwall achieves a minimum long-term static safety factor of 1.3 and prevents slides, or provide an alternative criterion to establish that the remaining highwall is stable and does not pose a hazard to the public health and safety or to the environment; and

553.540. Spoil placed on the outslope during previous mining operations will not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

553.600. Previously Mined Areas (PMA's) and Continuously Mined Areas (CMA's). For PMA's and CMA's the special compliance measures include:

553.610. The requirements of R645-301-553.110 and R645-301-553.120, addressing the elimination of highwalls, will not apply to PMA's or CMA's where the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall will be eliminated to the maximum extent technically practical in accordance with the following requirements:

553.611. All spoils generated by the remining operation or CMA and any other reasonably available spoil will be used to backfill the area;

553.612. Reasonably available spoil in the immediate vicinity of the remining operation or CMA will be included within the permit area.

553.650. Highwall Management Under the Approximate Original Contour Provisions. For situations where a permittee seeks approval for a remaining highwall under the AOC provisions, the permittee will establish, and the Division will find in writing that the remaining highwall will achieve the stability requirements of R645-301-553.530, that the remaining highwall will meet the approximate original contour criteria of R645-301-553.510 and R645-301-553.520, and that the

proposal meets the following criteria:

553.650.100. The remaining highwall will not be greater in height or length than the cliffs and cliff-like escarpments that were replaced or disturbed by the mining operations;

553.650.200. The remaining highwall will replace a preexisting cliff or similar natural premining feature and will resemble the structure, composition, and function of the natural cliff it replaces;

553.650.300. The remaining highwall will be modified, if necessary, as determined by the Division to restore cliff-type habitats used by the flora and fauna existing prior to mining;

553.650.400. The remaining highwall will be compatible with the postmining land use and the visual attributes of the area; and

553.650.500. The remaining highwall will be compatible with the geomorphic processes of the area.

553.700. Backfilling and Grading: Thin Overburden. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, thin overburden means that sufficient spoil and other waste materials to restore the disturbed area to its approximate original contour are not available from the entire permit area. A condition of insufficient spoil and other waste materials is deemed to exist when the overburden thickness times the swell factor, plus the thickness of other available waste materials is less than the combined thickness of the overburden and the coal prior to removing the coal. Backfilling and grading to reclaim a thin overburden area would result in a surface configuration of the reclaimed area that would not closely resemble the topography of the land prior to mining or blend into and complement the drainage pattern of the surrounding terrain. The provisions of this section apply only when SURFACE COAL MINING AND RECLAMATION ACTIVITIES cannot be carried out to comply with the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600, and R645-301-553.900 to achieve the approximate original contour. The operator will, at a minimum:

553.710. Use all available spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose; and

553.720. Meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100.

553.800. Backfilling and Grading: Thick Overburden. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, thick overburden means that more than sufficient spoil and other waste materials to restore the disturbed area to its approximate original contour are available from the entire permit area. A condition of more than sufficient spoil and other waste materials is deemed to exist when the overburden thickness times the swell factor, plus the thickness of other available waste materials exceeds the combined thickness of the overburden and the coal prior to removing the coal. Backfilling and grading to reclaim a thick overburden area would result in a surface configuration of the reclaimed area that would not closely resemble the topography of the land prior to mining or blend into and complement the drainage pattern of the surrounding terrain. The provisions of this section apply only when SURFACE COAL MINING AND RECLAMATION ACTIVITIES cannot be carried out to comply with the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600, and R645-301-553.900 to achieve the approximate original contour. In addition the operator will, at a minimum:

553.810. Use the spoil and waste materials to attain the

lowest practicable grade, but not more than the angle of repose; 553.820. Meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100; and

553.830. Dispose of any excess spoil in accordance with R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

553.900. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, regrading of settled and revegetated fills at the conclusion of coal mining and reclamation operations will not be required if the conditions of R645-301-537.200 are met;

560. Performance Standards. Coal mining and reclamation operations will be conducted in accordance with the approved permit and requirements of R645-301-510 through R645-301-553.

R645-301-600. Geology.

The rules in R645-301-600 present the requirements for information related to geology which is to be included in each permit application.

610. Introduction.

611. General Requirements. Each permit application will include descriptions of:

611.100. The geology within and adjacent to the permit area as given under R645-301-621 through R645-301-627; and

611.200. Proposed operations given under R645-301-630.

612. All cross sections, maps and plans as required by R645-301-622 will be prepared and certified as described under R645-301-512.100

620. Environmental Description.

621. General Requirements. Each permit application will include a description of the geology within the proposed permit and adjacent areas that may be affected or impacted by the proposed coal mining and reclamation operation.

622. Cross Sections, Maps and Plans. The application will include cross sections, maps and plans showing:

622.100. Elevations and locations of test borings and core samplings;

622.200. Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;

622.300. All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area; and

622.400. Location, and depth if available, of gas and oil wells within the proposed permit area.

623. Each application will include geologic information in sufficient detail to assist in:

623.100. Determining all potentially acid- or toxic-forming strata down to and including the stratum immediately below the coal seam to be mined;

623.200. Determining whether reclamation as required by R645-301 and R645-302 can be accomplished; and

623.300. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES preparing the subsidence control plan described under R645-301-525 and R645-521-142.

624. Geologic information will include, at a minimum, the following:

624.100. A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be

mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This description will include the regional and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and it will also show how the regional and structural geology may affect the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground water. It will be based on:

624.110. The cross sections, maps, and plans required by R645-301-622.100 through R645-301-622.400.

624.120. The information obtained under R645-301-624.200, R645-301-624.300 and R645-301-625; and

624.130. Geologic literature and practices.

624.200. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, samples will be collected and analyzed from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The analyses will result in the following:

624.210. Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;

624.220. Chemical analyses identifying those strata that may contain acid- or toxic-forming, or alkalinity-producing materials and to determine their content except that the Division may find that the analysis for alkalinity-producing material is unnecessary; and

624.230. Chemical analysis of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Division may find that the analysis of pyritic sulfur content is unnecessary.

624.300. For lands within the permit and adjacent areas of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES where the strata above the coal seam to be mined will not be removed, samples will be collected and analyzed from test borings or drill cores to provide the following data:

624.310. Logs of drill holes showing the lithologic characteristics, including physical properties and thickness of each stratum that may be impacted, and location of ground water where occurring;

624.320. Chemical analyses for acid- or toxic-forming or alkalinity-producing materials and their content in the strata immediately above and below the coal seam to be mined;

624.330. Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Division may find that the analysis of pyrite sulfur content is unnecessary; and

624.340. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, in the stratum immediately above and below each coal seam to be mined.

625. If determined to be necessary to protect the hydrologic balance, to minimize or prevent subsidence, or to meet the performance standards of R645-301 and R645-302, the Division may require the collection, analysis and description of geologic information in addition to that required by R645-301-624.

626. An applicant may request the Division to waive in whole or in part the requirements of R645-301-624.200 and R645-301-624.300. The waiver may be granted only if the Division finds in writing that the collection and analysis of such data is unnecessary because other information having equal value or effect is available to the Division in a satisfactory form.

627. An application for a permit to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will include, at a minimum, a description of overburden thickness and lithology.

630. Operation Plan.

631. Casing and Sealing of Exploration Holes and Boreholes. Each permit application will include a description of the methods used to backfill, plug, case, cap, seal or otherwise manage exploration holes or boreholes to prevent acid or toxic drainage from entering water resources, minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. Each exploration hole or borehole that is uncovered or exposed by coal mining and reclamation operations within the permit area will be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the Division. Use of an exploration borehole as a monitoring or water well must meet the provisions of R645-301-551 and R645-301-731. The requirements of R645-301-631 do not apply to boreholes drilled for the purpose of blasting.

631.100. Temporary Casing and Sealing of Drilled Holes. Each exploration borehole, other drill hole or borehole which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings or to be used to monitor ground water conditions will be temporarily sealed before use and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, protected during use by barricades, or fences, or other protective devices approved by the Division. These protective devices will be periodically inspected and maintained in good operating condition by the operator conducting surface coal mining and reclamation activities.

631.200. Permanent Casing and Sealing of Exploration Holes and Boreholes. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under R645-301-731.400, each exploration hole or borehole will be plugged, capped, sealed, backfilled or otherwise properly managed under R645-301-551, R645-301-631 and consistent with 30 CFR 75.1711. Permanent closure methods will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery and to keep acid or other toxic drainage from entering water resources.

632. Subsidence Monitoring. Each application for a permit to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will, except where planned subsidence is projected to be used, include as part of the subsidence monitoring plan described under R645-301-525:

632.100. A determination of the commencement and degree of subsidence so other appropriate measures can be taken to prevent or reduce material damage; and

632.200. A map showing the locations of subsidence monitoring points within and adjacent to the permit area.

640. Performance Standards.

641. All exploration holes and boreholes will be permanently cased and sealed according to the requirements of R645-301-631 and R645-301-631.200.

642. All monuments and surface markers used as subsidence monitoring points and identified under R645-301-632.200 will be reclaimed in accordance with R645-301-521.210.

R645-301-700. Hydrology.

710. Introduction.

711. General Requirements. Each permit application will include descriptions of:

711.100. Existing hydrologic resources as given under R645-301-720.

711.200. Proposed operations and potential impacts to the hydrologic balance as given under R645-301-730.

711.300. The methods and calculations utilized to achieve compliance with hydrologic design criteria and plans given under R645-301-740.

711.400. Applicable hydrologic performance standards as given under R645-301-750.

711.500. Reclamation activities as given under R645-301-760.

712. Certification. All cross sections, maps and plans required by R645-301-722 as appropriate, and R645-301-731.700 will be prepared and certified according to R645-301-512.

713. Inspection. Impoundments will be inspected as described under R645-301-514.300.

720. Environmental Description.

721. General Requirements. Each permit application will include a description of the existing, premining hydrologic resources within the proposed permit and adjacent areas that may be affected or impacted by the proposed coal mining and reclamation operation.

722. Cross Sections and Maps. The application will include cross sections and maps showing:

722.100. Location and extent of subsurface water, if encountered, within the proposed permit or adjacent areas. For UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, location and extent will include, but not limited to areal and vertical distribution of aquifers, and portrayal of seasonal differences of head in different aquifers on cross-sections and contour maps;

722.200. Location of surface water bodies such as streams, lakes, ponds and springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

722.300. Elevations and locations of monitoring stations used to gather baseline data on water quality and quantity in preparation of the application;

722.400. Location and depth, if available, of water wells in the permit area and adjacent area; and

722.500. Sufficient slope measurements or contour maps to adequately represent the existing land surface configuration of proposed disturbed areas for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and the proposed permit area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES will be measured and recorded to take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

723. Sampling and Analysis. All water quality analyses performed to meet the requirements of R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be conducted according to the methodology in the current edition of "Standard Methods for the Examination of Water and Wastewater" or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater" is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 Fifteenth Street, NW, Washington, D. C. 20036.

724. Baseline Information. The application will include the following baseline hydrologic, geologic and climatologic

information, and any additional information required by the Division.

724.100. Ground Water Information. The location and ownership for the permit and adjacent areas of existing wells, springs and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water quality descriptions will include, at a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron and total manganese. Ground-water quantity descriptions will include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

724.200. Surface water information. The name, location, ownership and description of all surface-water bodies such as streams, lakes and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions will include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron and total manganese. Baseline acidity and alkalinity information will be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions will include, at a minimum, baseline information on seasonal flow rates.

724.300. Geologic Information. Each application will include geologic information in sufficient detail, as given under R645-301-624, to assist in:

724.310. Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary; and

724.320. Determining whether reclamation as required by the R645 Rules can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

724.400. Climatological Information.

724.410. When requested by the Division, the permit application will contain a statement of the climatological factors that are representative of the proposed permit area, including:

724.411. The average seasonal precipitation;

724.412. The average direction and velocity of prevailing winds; and

724.413. Seasonal temperature ranges.

724.420. The Division may request such additional data as deemed necessary to ensure compliance with the requirements of R645-301 and R645-302.

724.500. Supplemental information. If the determination of the PHC required by R645-301-728 indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under R645-301-724.100 and R645-301-724.200 will be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

724.700. Each permit application that proposes to conduct coal mining and reclamation operations within a valley holding a stream or in a location where the permit area or adjacent area includes any stream will meet the requirements of R645-302-320.

725. Baseline Cumulative Impact Area Information.

725.100. Hydrologic and geologic information for the

cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations on surface- and ground-water systems as required by R645-301-729 will be provided to the Division if available from appropriate federal or state agencies.

725.200. If this information is not available from such agencies, then the applicant may gather and submit this information to the Division as part of the permit application.

725.300. The permit will not be approved until the necessary hydrologic and geologic information is available to the Division.

726. Modeling. The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the Division for each site even when such techniques are used.

727. Alternative Water Source Information. If the probable hydrologic consequences determination required by R645-301-728 indicates that the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the application will contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

728. Probable Hydrologic Consequences (PHC) Determination.

728.100. The permit application will contain a determination of the PHC of the proposed coal mining and reclamation operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

728.200. The PHC determination will be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

728.300. The PHC determination will include findings on:

728.310. Whether adverse impacts may occur to the hydrologic balance;

728.320. Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies;

728.330. What impact the proposed coal mining and reclamation operation will have on:

728.331. Sediment yield from the disturbed area;

728.332. Acidity, total suspended and dissolved solids and other important water quality parameters of local impact;

728.333. Flooding or streamflow alteration;

728.334. Ground-water and surface-water availability; and

728.335. Other characteristics as required by the Division; and

728.340. Whether the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY will proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose; Or

728.350. Whether the UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES conducted after October 24, 1992 may result in contamination, diminution or interruption of State-appropriated Water in existence within the proposed permit or adjacent areas at the time the application is submitted.

728.400. An application for a permit revision will be reviewed by the Division to determine whether a new or updated PHC determination will be required.

729. Cumulative Hydrologic Impact Assessment (CHIA).

729.100. The Division will provide an assessment of the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations upon surface- and ground-water systems in the cumulative impact area. The CHIA will be sufficient to determine, for purposes of permit approval whether the proposed coal mining and reclamation operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Division may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

729.200. An application for a permit revision will be reviewed by the Division to determine whether a new or updated CHIA will be required.

730. Operation Plan.

731. General Requirements. The permit application will include a plan, with maps and descriptions, indicating how the relevant requirements of R645-301-730, R645-301-740, R645-301-750 and R645-301-760 will be met. The plan will be specific to the local hydrologic conditions. It will contain the steps to be taken during coal mining and reclamation operations through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to support approved postmining land use in accordance with the terms and conditions of the approved permit and performance standards of R645-301-750; to comply with the Clean Water Act (33 U.S.C. 1251 et seq.); and to meet applicable federal and Utah water quality laws and regulations. The plan will include the measures to be taken to: avoid acid or toxic drainage; prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water treatment facilities when needed; and control drainage. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the plan will include measures to be taken to protect or replace water rights and restore approximate premining recharge capacity. The plan will specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under R645-301-728 and will include preventative and remedial measures.

The Division may require additional preventative, remedial or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Coal mining and reclamation operations that minimize water pollution and changes in flow will be used in preference to water treatment.

731.100. Hydrologic-Balance Protection.

731.110. Ground-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R645-301-731 and the following:

731.111. Ground-water quality will be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water; and

731.112. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES ground-water quantity will be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.

731.120. Surface-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R645-301-731 and the following:

731.121. Surface-water quality will be protected by handling earth materials, ground-water discharges and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and, otherwise prevent water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching or other reclamation and remedial practices are not adequate to meet the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800 and R645-301-751, the operator will use and maintain the necessary water treatment facilities or water quality controls; and

731.122. Surface-water quantity and flow rates will be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under R645-301-731.

731.200. Water Monitoring.

731.210. Ground-Water Monitoring. Ground-water monitoring will be conducted according to the plan approved under R645-301-731.200 and the following:

731.211. The permit application will include a ground-water monitoring plan based upon the PHC determination required under R645-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in R645-301-731. It will identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, total manganese and water levels will be monitored;

731.212. Ground-water will be monitored and data will be submitted at least every three months for each monitoring location. Monitoring submittals will include analytical results from each sample taken during the approved reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator will promptly notify the Division and immediately take the actions provided for in R645-300-145 and R645-301-731;

731.213. If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Division;

731.214. Ground-water monitoring will proceed through mining and continue during reclamation until bond release. Consistent with the procedures of R645-303-220 through R645-303-228, the Division may modify the monitoring requirements including the parameters covered and the sampling frequency if the operator demonstrates, using the monitoring data obtained under R645-301-731.214 that:

731.214.1. The coal mining and reclamation operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses and the SURFACE COAL MINING AND RECLAMATION ACTIVITY has protected or replaced the water rights of other users; or

731.214.2. Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under R645-301-731.211.

731.215. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of ground water on-site and off-site will be properly installed, maintained and operated and will be removed by the operator when no longer needed.

731.220. Surface-Water Monitoring. Surface-water monitoring will be conducted according to the plan approved under R645-301-731.220 and the following:

731.221. The permit application will include a surface-water monitoring plan based upon the PHC determination required under R645-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in R645-301-731 as well as the effluent limitations found in R645-301-751;

731.222. The plan will identify the surface water quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data may be used to determine the impacts of the operation upon the hydrologic balance:

731.222.1. At all monitoring locations in streams, lakes and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25 degrees C, total suspended solids, pH, total iron, total manganese and flow will be monitored; and

731.222.2. For point-source discharges, monitoring will be conducted in accordance with 40 CFR Parts 122 and 123, R645-301-751 and as required by the Utah Division of Environmental Health for National Pollutant Discharge Elimination System (NPDES) permits;

731.223. Surface-water monitoring data will be submitted at least every three months for each monitoring location. Monitoring submittals will include analytical results from each sample taken during the approved reporting period. When the analysis of any surface water sample indicates noncompliance with the permit conditions, the operator will promptly notify the Division and immediately take the actions provided for in R645-300-145 and R645-301-731. The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements;

731.224. Surface-water monitoring will proceed through mining and continue during reclamation until bond release. Consistent with R645-303-220 through R645-303-228, the Division may modify the monitoring requirements, except those required by the Utah Division of Environmental Health, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under R645-301-731.224 that:

731.224.1. The operator has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses and the SURFACE COAL MINING AND RECLAMATION ACTIVITY has protected or replaced the water rights of other users; or

731.224.2. Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under R645-301-731.221.

731.225. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of surface water on-site and off-site will be properly installed, maintained and operated and will be removed by the operator when no longer needed.

731.300. Acid- and Toxic-Forming Materials.

731.310. Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water will be avoided by:

731.311. Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated; and

731.312. Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff and the infiltration of polluted water. Storage will be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

731.320. Storage, burial or treatment practices will be consistent with other material handling and disposal provisions of R645 Rules.

731.400. Transfer of Wells. Before final release of bond, exploratory or monitoring wells will be sealed in a safe and environmentally sound manner in accordance with R645-301-631, R645-301-738, and R645-301-765. With the prior approval of the Division, wells may be transferred to another party for further use. However, at a minimum, the conditions of such transfer will comply with Utah and local laws and the permittee will remain responsible for the proper management of the well until bond release in accordance with R645-301-529, R645-301-551, R645-301-631, R645-301-738, and R645-301-765.

731.500. Discharges.

731.510. Discharges into an underground mine.

731.511. Discharges into an underground mine are prohibited, unless specifically approved by the Division after a demonstration that the discharge will:

731.511.1. Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from coal mining and reclamation operations;

731.511.2. Not result in a violation of applicable water quality standards or effluent limitations;

731.511.3. Be at a known rate and quality which will meet the effluent limitations of R645-301-751 for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the Division; and

731.511.4. Meet with the approval of MSHA.

731.512. Discharges will be limited to the following:

731.512.1. Water;

731.512.2. Coal processing waste;

731.512.3. Fly ash from a coal fired facility;

731.512.4. Sludge from an acid-mine-drainage treatment facility;

731.512.5. Flue-gas desulfurization sludge;

731.512.6. Inert materials used for stabilizing underground mines; and

731.512.7. Underground mine development wastes.

731.513. Water from the underground workings of an UNDERGROUND COAL MINING AND RECLAMATION ACTIVITY may be diverted into other underground workings according to the requirements of R645-301-731.100 through R645-301-731.522 and R645-301-731.800.

731.520. Gravity Discharges from UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

731.521. Surface entries and accesses to underground workings will be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other than a drift mine subject to R645-301-731.522, may be allowed by the Division if it is demonstrated that the untreated or treated discharge complies with the performance standards of R645-301 and R645-302 and any additional NPDES permit requirements.

731.522. Notwithstanding anything to the contrary in R645-301-731.521, the surface entries and accesses of drift mines first used after January 21, 1981 and located in acid-producing or iron-producing coal seams will be located in such a manner as to prevent any gravity discharge from the mine.

731.530. State-appropriated water supply. The permittee will promptly replace any State-appropriated water supply that is contaminated, diminished or interrupted by UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES conducted after October 24, 1992, if the affected water supply was in existence before the date the Division received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic and geologic information required in R645-301-700. will be used to determine the impact of mining activities upon the water supply.

731.600. Stream Buffer Zones.

731.610. No land within 100 feet of a perennial stream or an intermittent stream or an ephemeral stream that drains a watershed of at least one square mile will be disturbed by coal mining and reclamation operations, unless the Division specifically authorizes coal mining and reclamation operations closer to, or through, such a stream. The Division may authorize such activities only upon finding that:

731.611. Coal mining and reclamation operations will not cause or contribute to the violation of applicable Utah or federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

731.612. If there will be a temporary or permanent stream channel diversion, it will comply with R645-301-742.300.

731.620. The area not to be disturbed will be designated as a buffer zone, and the operator will mark it as specified in R645-301-521.260.

731.700. Cross Sections and Maps. Each application will contain for the proposed permit area:

731.710. A map showing the locations of water supply intakes for current users of surface water flowing into, out of and within a hydrologic area defined by the Division, and those surface waters which will receive discharges from affected areas in the proposed permit area;

731.720. A map showing the locations of each water diversion, collection, conveyance, treatment, storage and discharge facility to be used. The map will be prepared and certified according to R645-301-512;

731.730. A map showing locations and elevations of each station to be used for water monitoring during coal mining and reclamation operations. The map will be prepared and certified according to R645-301-512;

731.740. A map showing the locations of each existing and proposed sedimentation pond, impoundment and coal processing waste bank, dam or embankment. The map will be prepared and certified according to R645-301-512;

731.750. Cross sections for each existing and proposed sedimentation pond, impoundment and coal processing waste bank, dam or embankment. The cross sections will be prepared and certified according to R645-301-512.200; and

731.760. Other relevant cross sections and maps required by the Division depending on the structures and facilities located in the permit area.

731.800. Water Rights and Replacement. Any person who conducts SURFACE COAL MINING AND RECLAMATION ACTIVITIES will replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline hydrologic information required in R645-301-624.100 through R645-301-624.200,

R645-301-625, R645-301-626, R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be used to determine the extent of the impact of mining upon ground water and surface water.

732. Sediment Control Measures.

732.100. Siltation Structures. Siltation structures will be constructed and maintained to comply with R645-301-742.214. Any siltation structure that impounds water will be constructed and maintained to comply with R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743.

732.200. Sedimentation Ponds.

732.210. Sedimentation ponds whether temporary or permanent, will be designed in compliance with the requirements of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment will also be constructed and maintained to comply with the requirements of R645-301-743, R645-301-533.100 through R645-301-533.600, R645-301-512.240, R645-301-514.310 through R645-301-514.321 and R645-301-515.200.

732.220. Each plan will, at a minimum, comply with the MSHA requirements given under R645-301-513.100 and R645-301-513.200.

732.300. Diversions. All diversions will be constructed and maintained to comply with the requirements of R645-301-742.100 and R645-301-742.300.

732.400. Road Drainage. All roads will be constructed, maintained and reconstructed to comply with R645-301-742.400.

732.410. The permit application will contain a description of measures to be taken to obtain Division approval for alteration or relocation of a natural drainageway under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

732.420. The permit application will contain a description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for Division approval under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

733. Impoundments.

733.100. General Plans. Each permit application will contain a general plan and detailed design plans for each proposed water impoundment within the proposed permit area. Each general plan will:

733.110. Be prepared and certified as described under R645-301-512;

733.120. Contain maps and cross sections;

733.130. Contain a narrative that describes the structure;

733.140. Contain the results of a survey as described under R645-301-531;

733.150. Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure; and

733.160. Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the Division. The Division will have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

733.200. Permanent and Temporary Impoundments.

733.210. Permanent and temporary impoundments will be designed to comply with the requirements of R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.226, R645-301-743.240, and R645-301-743. Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration will comply with the requirements of 30 CFR 77.216-1 and 30 CFR 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will be submitted to the Division as part of the permit application package. For impoundments not included in R645-301-533.610 the Division may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in R645-301-533.110.

733.220. A permanent impoundment of water may be created, if authorized by the Division in the approved permit based upon the following demonstration:

733.221. The size and configuration of such impoundment will be adequate for its intended purposes;

733.222. The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable Utah and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable Utah and federal water quality standards;

733.223. The water level will be sufficiently stable and be capable of supporting the intended use;

733.224. Final grading will provide for adequate safety and access for proposed water users;

733.225. The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses; and

733.226. The impoundment will be suitable for the approved postmining land use.

733.230. The Division may authorize the construction of temporary impoundments as part of coal mining and reclamation operations.

733.240. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment will promptly inform the Division according to R645-301-515.200.

734. Discharge Structures. Discharge structures will be constructed and maintained to comply with R645-301-744.

735. Disposal of Excess Spoil. Areas designated for the disposal of excess spoil and excess spoil structures will be constructed and maintained to comply with R645-301-745.

736. Coal Mine Waste. Areas designated for the disposal of coal mine waste and coal mine waste structures will be constructed and maintained to comply with R645-301-746.

737. Noncoal Mine Waste. Noncoal mine waste will be stored and final disposal of noncoal mine waste will comply with R645-301-747.

738. Temporary Casing and Sealing of Wells. Each well which has been identified in the approved permit application to be used to monitor ground water conditions will comply with R645-301-748 and be temporarily sealed before use and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES protected during use by barricades, or fences, or other protective devices approved by the Division. These devices will be periodically inspected and maintained in good operating condition by the operator conducting SURFACE COAL MINING AND RECLAMATION ACTIVITIES.

740. Design Criteria and Plans.

741. General Requirements. Each permit application will include site-specific plans that incorporate minimum design criteria as set forth in R645-301-740 for the control of drainage from disturbed and undisturbed areas.

742. Sediment Control Measures.

742.100. General Requirements.

742.110. Appropriate sediment control measures will be designed, constructed and maintained using the best technology currently available to:

742.111. Prevent, to the extent possible, additional contributions of sediment to stream flow or to runoff outside the permit area;

742.112. Meet the effluent limitations under R645-301-751; and

742.113. Minimize erosion to the extent possible.

742.120. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas will reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include, but are not limited to:

742.121. Retaining sediment within disturbed areas;

742.122. Diverting runoff away from disturbed areas;

742.123. Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

742.124. Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds and other measures that reduce overland flow velocities, reduce runoff volumes or trap sediment;

742.125. Treating with chemicals; and

742.126. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, treating mine drainage in underground sumps.

742.200. Siltation Structures. Siltation structures shall be designed in compliance with the requirements of R645-301-742.

742.210. General Requirements.

742.211. Additional contributions of suspended solids and sediment to streamflow or runoff outside the permit area will be prevented to the extent possible using the best technology currently available.

742.212. Siltation structures for an area will be constructed before beginning any coal mining and reclamation operations in that area and, upon construction, will be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

742.213. Any siltation structure which impounds water will be designed, constructed and maintained in accordance with R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743.

742.214. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, any point-source discharge of water from underground workings to surface waters which does not meet the effluent limitations of R645-301-751 will be passed through a siltation structure before leaving the permit area.

742.220. Sedimentation Ponds.

742.221. Sedimentation ponds, when used, will:

742.221.1. Be used individually or in series;

742.221.2. Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Division; and

742.221.3. Be designed, constructed, and maintained to:

742.221.31. Provide adequate sediment storage volume;

742.221.32. Provide adequate detention time to allow the effluent from the ponds to meet Utah and federal effluent limitations;

742.221.33. Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the Division based on terrain, climate, or other site-specific conditions and on a demonstration by the operator that the effluent limitations of R645-301-751 will be met;

742.221.34. Provide a nonclogging dewatering device adequate to maintain the detention time required under R645-301-742.221.32.

742.221.35. Minimize, to the extent possible, short circuiting;

742.221.36. Provide periodic sediment removal sufficient to maintain adequate volume for the design event;

742.221.37. Ensure against excessive settlement;

742.221.38. Be free of sod, large roots, frozen soil, and acid- or toxic forming coal-processing waste; and

742.221.39. Be compacted properly.

742.222. Sedimentation ponds meeting the size or other qualifying criteria of the MSHA, 30 CFR 77.216(a) will comply with all the requirements of that section, and will have a single spillway or principal and emergency spillways that in combination will safely pass a 100-year, 6-hour precipitation event or greater event as demonstrated to be necessary by the Division.

742.223. Sedimentation ponds not meeting the size or other qualifying criteria of the MSHA, 30 CFR 77.216(a) will provide a combination of principal and emergency spillways that will safely discharge a 25-year, 6-hour precipitation event or greater event as demonstrated to be needed by the Division. Such ponds may use a single open channel spillway if the spillway is:

742.223.1. Of nonerodible construction and designed to carry sustained flows; or

742.223.2. Earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

742.224. In lieu of meeting the requirements of R645-301-742.223.1 and 742.223.2 the Division may approve a temporary impoundment as a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer in accordance with R645-301-512.200 that the sedimentation pond will safely control the design precipitation event. The water will be removed from the pond in accordance with current, prudent, engineering practices and any sediment pond so used will not be located where failure would be expected to cause loss of life or serious property damage.

742.225. An exception to the sediment pond location guidance in R645-301-742.224 may be allowed where:

742.225.1. Impoundments meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR Sec. 77.216(a) shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event specified by the Division.

742.225.2. Impoundments not included in R645-301-742.225.1 shall be designed to control the precipitation of the 100-year 6-hour event, or greater event if specified by the Division.

742.230. Other Treatment Facilities.

742.231. Other treatment facilities will be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Division based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of R645-301-751 will be met.

742.232. Other treatment facilities will be designed in

accordance with the applicable requirements of R645-301-742.220.

742.240. Exemptions. Exemptions to the requirements of R645-301-742.200 and R645-301-763 may be granted if the disturbed drainage area within the total disturbed area is small and the operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed areas to meet the effluent limitations under R645-301-751 or the applicable Utah and federal water quality standards for the receiving waters.

742.300. Diversions.

742.310. General Requirements.

742.311. With the approval of the Division, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions will be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions will not be used to divert water into underground mines without approval of the Division in accordance with R645-301-731.510.

742.312. The diversion and its appurtenant structures will be designed, located, constructed, maintained and used to:

742.312.1. Be stable;

742.312.2. Provide protection against flooding and resultant damage to life and property;

742.312.3. Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

742.312.4. Comply with all applicable local, Utah, and federal laws and regulations.

742.313. Temporary diversions will be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process will be restored in accordance with R645-301 and R645-302. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion will be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement will not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion will be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

742.314. The Division may specify additional design criteria for diversions to meet the requirements of R645-301-742.300.

742.320. Diversion of Perennial and Intermittent Streams and Ephemeral Streams that Drain a Watershed of at Least One Square Mile.

742.321. Diversion of streams within the permit area may be approved by the Division after making the finding relating to stream buffer zones under R645-301-731.600. This applies to perennial and intermittent streams and ephemeral streams that drain a watershed of at least one square mile.

742.322. The design capacity of channels for temporary and permanent stream channel diversions will be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

742.323. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversion for perennial and intermittent streams and ephemeral streams that drain a watershed of at least one square mile are designed so that the

combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

742.324. The design and construction of all stream channel diversions of perennial and intermittent streams and ephemeral streams that drain a watershed of at least one square mile will be certified by a qualified registered professional engineer as meeting the performance standards of R645-301 and R645-302 and any design criteria set by the Division.

742.330. Diversion of Miscellaneous Flows.

742.331. Miscellaneous flows, which consist of all flows except for perennial and intermittent streams and ephemeral streams that drain a watershed of at least one square mile, may be diverted away from disturbed areas if required or approved by the Division. Miscellaneous flows will include ground-water discharges and ephemeral streams that drain a watershed of less than one square mile.

742.332. The design, location, construction, maintenance, and removal of diversions of miscellaneous flows will meet all of the performance standards set forth in R645-301-742.310.

742.333. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

742.400. Road Drainage.

742.410. All Roads.

742.411. To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads will incorporate appropriate limits for surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the Division.

742.412. No part of any road will be located in the channel of an intermittent or perennial stream or an ephemeral stream that drains a watershed of at least one square mile unless specifically approved by the Division in accordance with applicable parts of R645-301-731 through R645-301-742.300.

742.413. Roads will be located to minimize downstream sedimentation and flooding.

742.420. Primary Roads.

742.421. To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.

742.422. Stream fords by primary roads are prohibited unless they are specifically approved by the Division as temporary routes during periods of construction.

742.423. Drainage Control.

742.423.1. Each primary road will be designed, constructed or reconstructed and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system will be designed to pass the peak runoff safely from a 10-year, 6-hour precipitation event, or an alternative event of greater size as demonstrated to be needed by the Division.

742.423.2. Drainage pipes and culverts will be constructed to avoid plugging or collapse and erosion at inlets and outlets.

742.423.3. Drainage ditches will be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins will be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

742.423.4. Natural stream channels will not be altered or relocated without the prior approval of the Division in

accordance with R645-301-731.100 through R645-301-731.522, R645-301-731.600, R645-301-731.800, R645-301-742.300, and R645-301-751.

742.423.5. Except as provided in R645-301-742.422, drainage structures will be used for stream channel crossings, made using bridges, culverts or other structures designed, constructed and maintained using current, prudent engineering practice.

743. Impoundments.

743.100. General Requirements. The requirements of R645-301-743 apply to both temporary and permanent impoundments. Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," shall comply with the, "Minimum Emergency Spillway Hydrologic Criteria," table in TR-60 and the requirements of this section. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-157509-AS. Copies may be inspected at the Division of Oil Gas and Mining Offices, 1594 West North Temple, Salt Lake City, Utah 84114 or at the Division of Administrative Rules, Archives Building, Capitol Hill Complex, Salt Lake City, Utah 84114-1021.

743.110. Impoundments meeting the criteria of the MSHA, 30 CFR 77.216(a) will comply with the requirements of 77.216 and R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will also be submitted to the Division as part of the permit application.

743.120. The design of impoundments will be prepared and certified as described under R645-301-512. Impoundments will have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the NRCS Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

743.130. Impoundments will include either a combination of principal and emergency spillways or a single spillway as specified in 743.131 which will be designed and constructed to safely pass the design precipitation event or greater event specified in R645-301-743.200 or R645-301-743.300.

743.131. The Division may approve a single-open channel spillway that is:

743.131.1. Of nonerodible construction and designed to carry sustained flows; or

743.131.2. Earth-or grass lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

743.131.3 Except as specified in R645-301-742.224 the required design precipitation event for an impoundment meeting the spillway requirements of R645-301-743.130 is:

743.131.4 For an impoundment meeting the NRCS Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the Division.

743.131.5 For an impoundment meeting or exceeding the size or other criteria of 30 CFR Sec. 77.216(a), a 100-year 6-hour event, or greater event as specified by the Division.

743.131.6 For an impoundment not included in R645-301-743.131.4 or 743.131.5, a 25-year 6-hour event, or greater event as specified by the Division.

743.132 In lieu of meeting the requirements of 743.131 the Division may approve an impoundment which meets the requirements of the sediment pond criteria of R645-301-742.224 and 742.225.

743.140. Impoundments will be inspected as described under R645-301-514.300.

743.200. The design precipitation event for the spillways for a permanent impoundment meeting the size or other criteria of MSHA rule 30 CFR 77.216(a) is a 100-year, 6-hour precipitation event, or such larger event as demonstrated to be needed by the Division.

743.300. The design precipitation event for the spillways for an impoundment not meeting the size or other criteria of MSHA rule 30 CFR 77.216(a) is a 25-year, 6-hour precipitation event, or such larger event as demonstrated to be needed by the Division.

744. Discharge Structures.

744.100. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions will be controlled, by energy dissipators, riprap channels and other devices, where necessary to reduce erosion to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance.

744.200. Discharge structures will be designed according to standard engineering design procedures.

745. Disposal of Excess Spoil.

745.100. General Requirements.

745.110. Excess spoil will be placed in designated disposal areas within the permit area, in a controlled manner to:

745.111. Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

745.112. Ensure permanent impoundments are not located on the completed fill. Small depressions may be allowed by the Division if they are needed to retain moisture or minimize erosion, create and enhance wildlife habitat or assist revegetation, and if they are not incompatible with the stability of the fill; and

745.113. Adequately cover or treat excess spoil that is acid- and toxic-forming with nonacid nontoxic material to control the impact on surface and ground water in accordance with R645-301-731.300 and to minimize adverse effects on plant growth and the approved postmining land use.

745.120. Drainage control. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design will include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill and ensure stability.

745.121. Diversions will comply with the requirements of R645-301-742.300.

745.122. Underdrains will consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the Division. The underdrain system will be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and will be protected from piping and contamination by an adequate filter. Rock underdrains will be constructed of durable, nonacid-, nontoxic-forming rock (e.g., natural sand and gravel, sandstone, limestone or other durable rock) that does not slake in water or degrade to soil materials and which is free of coal, clay or other nondurable material. Perforated pipe underdrains will be corrosion resistant and will have characteristics consistent with the long-term life of the fill.

745.200. Valley Fills and Head-of-Hollow Fills.

745.210. Valley fills and head-of-hollow fills will meet the applicable requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100 and the requirements of R645-301-745.200 and R645-301-535.200.

745.220. Drainage Control.

745.221. The top surface of the completed fill will be graded such that the final slope after settlement will be toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill.

745.222. Runoff from areas above the fill and runoff from the surface of the fill will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

745.300. Durable Rock Fills. The Division may approve disposal of excess durable rock spoil provided the following conditions are satisfied:

745.310. Except as provided in R645-301-745.300, the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100 are met;

745.320. The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met; and

745.330. Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

745.400. Preexisting Benches. The Division may approve the disposal of excess spoil through placement on preexisting benches, provided that the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-535.300 through R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400 and the requirements of R645-301-535.400 are met.

746. Coal Mine Waste.

746.100. General Requirements.

746.110. All coal mine waste will be placed in new or existing disposal areas within a permit area which are approved by the Division.

746.120. Coal mine waste will be placed in a controlled manner to minimize adverse effects of leachate and surface water runoff on surface and ground water quality and quantity.

746.200. Refuse Piles.

746.210. Refuse piles will meet the requirements of R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100 and the additional requirements of R645-301-210, R645-301-513.400, R645-301-514.200, R645-301-528.322, R645-301-536.900, R645-301-553.250, and R645-301-746.200 and the requirements of the MSHA, 30 CFR 77.214 and 77.215.

746.211. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design will include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

746.212. Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from areas above the refuse pile and runoff from the surface of the refuse pile will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with

runoff from the surface of the refuse pile.

746.213. Underdrains will comply with the requirements of R645-301-745.122.

746.220. Surface Area Stabilization.

746.221. Slope protection will be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, will be revegetated upon completion of construction.

746.222. No permanent impoundments will be allowed on the completed refuse pile. Small depressions may be allowed by the Division if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

746.300. Impounding structures. New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste will meet the requirements of R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100.

746.310. Coal mine waste will not be used for construction of impounding structures unless it has been demonstrated to the Division that the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The potential impact of acid mine seepage through the impounding structure will be discussed in detail.

746.311. Each impounding structure constructed of coal mine waste or intended to impound coal mine waste will be designed, constructed and maintained in accordance with R645-301-512.240, R645-301-513.200, R645-301-514.310 through R645-301-514.330, R645-301-515.200, R645-301-533.100 through R645-301-533.500, R645-301-733.230, R645-301-733.240, R645-301-743.100, and R645-301-743.300. Such structures may not be retained permanently as part of the approved postmining land use.

746.312. Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) will have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event, or greater event as demonstrated to be needed by the Division.

746.320. Spillways and outlet works will be designed to provide adequate protection against erosion and corrosion. Inlets will be protected against blockage.

746.330. Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that may cause instability or erosion of the impounding structure will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and designed to safely pass the runoff from a 100-year, 6-hour design precipitation event.

746.340. Impounding structures constructed of or impounding coal mine waste will be designed and operated so that at least 90 percent of the water stored during the design precipitation event will be removed within a 10-day period following that event.

746.400. Return of Coal Processing Waste to Abandoned Underground Workings. Each permit application to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will, if appropriate, include a plan of proposed methods for returning coal processing waste to abandoned underground workings as follows:

746.410. The plan will describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retention of water underground, treatment of water if released to surface streams and the effect on the hydrologic regime;

746.420. The plan will describe each permanent monitoring well to be located in the backfilled areas, the stratum underlying the mined coal and gradient from the backfilled area; and

746.430. The requirements of R645-301-513.300, R645-301-528.321, R645-301-536.700, R645-301-746.410 and R645-746.420 will also apply to pneumatic backfilling operations, except where the operations are exempted by the Division from requirements specifying hydrologic monitoring.

747. Disposal of Noncoal Mine Waste.

747.100. Noncoal mine waste, including but not limited to grease, lubricants, paints, flammable liquids, garbage, machinery, lumber and other combustible materials generated during coal mining and reclamation operations will be placed and stored in a controlled manner in a designated portion of the permit area or state-approved solid waste disposal area.

747.200. Placement and storage of noncoal mine waste within the permit area will ensure that leachate and surface runoff do not degrade surface or ground water.

747.300. Final disposal of noncoal mine waste within the permit area will ensure that leachate and drainage does not degrade surface or underground water.

748. Casing and Sealing of Wells. Each water well will be cased, sealed, or otherwise managed, as approved by the Division, to prevent acid or other toxic drainage from entering ground or surface water, to minimize disturbance to the hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. If a water well is exposed by coal mining and reclamation operations, it will be permanently closed unless otherwise managed in a manner approved by the Division. Use of a drilled hole or borehole or monitoring well as a water well must comply with the provision of R645-301-731.100 through R645-301-731.522 and R645-301-731.800.

750. Performance Standards.

All coal mining and reclamation operations will be conducted to minimize disturbance to the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area and support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of R645-301 and R645-302. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, operations will be conducted to assure the protection or replacement of water rights in accordance with the terms and conditions of the approved permit and the performance standards of R645-301 and R645-302.

751. Water Quality Standards and Effluent Limitations. Discharges of water from areas disturbed by coal mining and reclamation operations will be made in compliance with all Utah and federal water quality laws and regulations and with effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.

752. Sediment Control Measures. Sediment control measures must be located, maintained, constructed and reclaimed according to plans and designs given under R645-301-732, R645-301-742 and R645-301-760.

752.100. Siltation structures and diversions will be located, maintained, constructed and reclaimed according to plans and designs given under R645-301-732, R645-301-742 and R645-301-763.

752.200. Road Drainage. Roads will be located, designed, constructed, reconstructed, used, maintained and reclaimed according to R645-301-732.400, R645-301-742.400 and R645-301-762 and to achieve the following:

752.210. Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

752.220. Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

752.230. Neither cause nor contribute to, directly or indirectly, the violation of effluent standards given under R645-301-751;

752.240. Minimize the diminution to or degradation of the quality or quantity of surface- and ground-water systems; and

752.250. Refrain from significantly altering the normal flow of water in streambeds or drainage channels.

753. Impoundments and Discharge Structures. Impoundments and discharge structures will be located, maintained, constructed and reclaimed to comply with R645-301-733, R645-301-734, R645-301-743, R645-301-745 and R645-301-760.

754. Disposal of Excess Spoil, Coal Mine Waste and Noncoal Mine Waste. Disposal areas for excess spoil, coal mine waste and noncoal mine waste will be located, maintained, constructed and reclaimed to comply with R645-301-735, R645-301-736, R645-301-745, R645-301-746, R645-301-747 and R645-301-760.

755. Casing and Sealing of Wells. All wells will be managed to comply with R645-301-748 and R645-301-765. Water monitoring wells will be managed on a temporary basis according to R645-301-738.

760. Reclamation.

761. General Requirements. Before abandoning a permit area or seeking bond release, the operator will ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments and treatment facilities meet the requirements of R645-301 and R645-302 for permanent structures, have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator will renovate such structures if necessary to meet the requirements of R645-301 and R645-302 and to conform to the approved reclamation plan.

762. Roads. A road not to be retained for use under an approved postmining land use will be reclaimed immediately after it is no longer needed for coal mining and reclamation operations, including:

762.100. Restoring the natural drainage patterns;

762.200. Reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain.

763. Siltation Structures.

763.100. Siltation structures will be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case will the structure be removed sooner than two years after the last augmented seeding.

763.200. When the siltation structure is removed, the land on which the siltation structure was located will be regraded and revegetated in accordance with the reclamation plan and R645-301-358, R645-301-356, and R645-301-357. Sedimentation ponds approved by the Division for retention as permanent impoundments may be exempted from this requirement.

764. Structure Removal. The application will include the timetable and plans to remove each structure, if appropriate.

765. Permanent Casing and Sealing of Wells. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under R645-301-731.100 through R645-301-731.522 and R645-301-731.800, each well will be capped, sealed, backfilled, or otherwise properly managed, as required by the Division in accordance with R645-301-529.400, R645-301-551, R645-301-631.100, and R645-301-748. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other

toxic drainage from entering ground or surface waters.

R645-301-800. Bonding and Insurance.

The rules in R645-301-800 set forth the minimum requirements for filing and maintaining bonds and insurance for coal mining and reclamation operations under the State Program.

810. Bonding Definitions and Division Responsibilities.

811. Terms used in R645-301-800 may be found defined in R645-100-200.

812. Division Responsibilities -- Bonding.

812.100. The Division will prescribe and furnish forms for filing performance bonds.

812.200. The Division will prescribe by regulation terms and conditions for performance bonds and insurance.

812.300. The Division will determine the amount of the bond for each area to be bonded, in accordance with R645-301-830. The Division will also adjust the amount as acreage in the permit area is revised, or when other relevant conditions change according to the requirements of R645-301-830.400.

812.400. The Division may accept a self-bond if the permittee meets the requirements of R645-301-860.300 and any additional requirements in the State or Federal program.

812.500. The Division will release liability under a bond or bonds in accordance with R645-301-880 through R645-301-880.800.

812.600. If the conditions specified in R645-301-880.900 occur, the Division will take appropriate action to cause all or part of a bond to be forfeited in accordance with procedures of that Section.

812.700. The Division will require in the permit that adequate bond coverage be in effect at all times. Except as provided in R645-301-840.520, operating without a bond is a violation of a condition upon which the permit is issued.

820. Requirement to File a Bond.

820.100. After a permit application under R645-301 has been approved, but before a permit is issued, the applicant will file with the Division, on a form prescribed and furnished by the Division, a bond or bonds for performance made payable to the Division and conditioned upon the faithful performance of all the requirements of the State Program, the permit and the reclamation plan.

820.110. Areas to be covered by the Performance Bond are:

820.111. The bond or bonds will cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct coal mining and reclamation operations during the initial term of the permit.

820.112. As coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee will file with the Division an additional bond or bonds to cover such increments in accordance with R645-830.400.

820.113. The operator will identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application, and will specify the bond amount to be provided for each area or increment.

820.114. Independent increments will be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the Division become necessary pursuant to R645-301-880.900.

820.120. An operator will not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels, or operations prior to acceptance by the Division of the required performance bond.

820.130. The applicant will file, with the approval of the Division, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area as determined in

accordance with R645-301-830:

820.131. A performance bond or bonds for the entire permit area;

820.132. A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or

820.133. An incremental-bond schedule and the performance bond required for the first increment in the schedule.

820.200. Form of the Performance Bond.

820.210. The Division will prescribe the form of the performance bond.

820.220. The Division may allow for:

820.221. A surety bond;

820.222. A collateral bond;

820.223. A self-bond; or

820.224. A combination of any of these bonding methods.

820.300. Period of Liability.

820.310. Performance bond liability will be for the duration of the coal mining and reclamation operations and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in R645-301-356 or until achievement of the reclamation requirements of the State Program and permit, whichever is later.

820.320. With the approval of the Division, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under R645-301-830 and 830.400. The scope of work to be guaranteed and the liability assumed under each phase bond will be specified in detail.

820.330. Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the Division. Such areas will be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the Division.

820.340. If the Division approves a long-term, intensive agricultural postmining land-use, in accordance with R645-301-413, the applicable five- or ten-year period of liability will commence at the date of initial planting for such long-term agricultural use.

820.350. General.

820.351. The bond liability of the permittee will include only those actions which he or she is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under R645-301-413.

820.352. Implementation of an alternative postmining land-use approved under R645-301-413.300 which is beyond the control of the permittee need not be covered by the bond. Bond liability for prime farmland will be as specified in R645-301-880.320.

830. Determination of Bond Amount.

830.100. The amount of the bond required for each bonded area will:

830.110. Be determined by the Division;

830.120. Depend upon the requirements of the approved permit and reclamation plan;

830.130. Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology and revegetation potential; and

830.140. Be based on, but not limited to, the detailed estimated cost, with supporting calculations for the estimates, submitted by the permit applicant.

830.200. The amount of the bond will be sufficient to

assure the completion of the reclamation plan if the work has to be performed by the Division in the event of forfeiture, and in no case will the total bond initially posted for the entire area under one permit be less than \$10,000.

830.300. An additional inflation factor will be added to the subtotal for the permit term. This inflation factor will be based upon an acceptable Costs Index.

830.400. Adjustment of Amount.

830.410. The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond will be adjusted by the Division from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The Division may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.

830.420. The Division will:

830.421. Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under R645-301-860.260 of any proposed adjustment to the bond amount; and

830.422. Provide the permittee an opportunity for an informal conference on the adjustment.

830.430. A permittee may request reduction of the amount of the performance bond upon submission of evidence to the Division providing that the permittee's method of operation or other circumstances reduces the estimated cost for the Division to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of R645-301-880.100 through R645-301-880.800.

830.440. In the event that an approved permit is revised in accordance with the R645 rules, the Division will review the bond for adequacy and, if necessary, will require adjustment of the bond to conform to the permit as revised.

830.500. An operator's financial responsibility under R645-301-525.230 for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under R645-301-890.

840. General Terms and Conditions of the Bond.

840.100. The performance bond will be in an amount determined by the Division as provided in R645-301-830.

840.200. The performance bond will be payable to the Division.

840.300. The performance bond will be conditioned upon faithful performance of all the requirements of the State Program and the approved permit, including completion of the reclamation plan.

840.400. The duration of the bond will be for the time period provided in R645-301-820.300.

840.500. General.

840.510. The bond will provide a mechanism for a bank or surety company to give prompt notice to the Division and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

840.520. Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee will be deemed to be without bond coverage and will promptly notify the Division. The Division, upon notification received through procedures of R645-301-840.510 or from the permittee, will, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator will cease coal extraction and will comply with the provisions of R645-301-541.100 through R645-301-541.400 as applicable and will immediately begin to

conduct reclamation operations in accordance with the reclamation plan. Mining operations will not resume until the Division has determined that an acceptable bond has been posted.

850. Bonding Requirements for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and Associated Long-Term Coal-Related Surface Facilities and Structures.

850.100. Responsibilities. The Division will require bond coverage, in an amount determined under R645-301-830, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, for which a permit is required. Specific reclamation techniques required for underground mines and long-term facilities will be considered in determining the amount of bond to complete the reclamation.

850.200. Long-term period of liability.

850.210. The period of liability for every bond covering long-term surface disturbances will commence with the issuance of a permit, except that to the extent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for that increment before the initial surface disturbance of that increment. The liability period will extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions of R645-301-880.100 through R645-301-880.800 or until the bond has been replaced or extended in accordance with R645-301-850.230.

850.220. Long-term surface disturbances will include long-term coal-related surface facilities and structures, and surface impacts incident to underground coal mining activities which disturb an area for a period that exceeds five years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities; coal refuse areas; powerlines; boreholes; ventilation shafts; preparation plants; machine shops, roads and loading and treatment facilities.

850.230. To achieve continuous bond coverage for long-term surface disturbances, the bond will be conditioned upon extension, replacement or payment in full, 30 days prior to the expiration of the bond term.

850.240. Continuous bond coverage will apply throughout the period of extended responsibility for successful revegetation and until the provisions of R645-301-880.100 through R645-301-880.800 inclusive have been met.

850.300. Bond Forfeiture. The Division will take action to forfeit a bond pursuant to R645-301-850 if 30 days prior to bond expiration the operator has not filed:

850.310. The performance bond for a new term as required for continuous coverage; or

850.320. A performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

860. Forms of Bonds.

860.100. Surety Bonds.

860.110. A surety bond will be executed by the operator and a corporate surety licensed to do business in Utah that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570.

860.111. Operators who do not have a surety bond with a company that meets the standards of subsection 860.110. will have 120 days from the date of Division notification after enactment of the changes to subsection 860.110. in which to achieve compliance, or face enforcement action.

860.112. When the Division in the course of examining surety bonds notifies an operator that a surety company guaranteeing its performance does not meet the standard of

subsection 860.110., the operator has 120 days after notice by mail from the Division to correct the deficiency, or face enforcement action.

860.120. Surety bonds will be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be canceled with the prior consent of the Division. The Division will advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be canceled on an undisturbed area.

860.200. Collateral Bonds.

860.210. Collateral bonds, except for letters of credit, cash accounts and real property, will be subject to the following conditions:

860.211. The Division will keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in R645-301-870 and R645-301-880;

860.212. The Division will value collateral at its current market value, not at face value;

860.213. The Division will require that certificates of deposit be made payable to or assigned to the Division both in writing and upon the records of the bank issuing the certificates. If assigned, the Division will require the banks issuing these certificates to waive all rights of setoff or liens against those certificates;

860.214. The Division will not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

860.220. Letters of credit will be subject to the following conditions:

860.221. The letter may be issued only by a bank organized or authorized to do business in the United States;

860.222. Letters of credit will be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage will be forfeited and will be collected by the Division if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

860.223. The letter of credit will be payable to the Division upon demand, in part or in full, upon receipt from the Division of a notice of forfeiture issued in accordance with R645-301-880.900.

860.230. Real property posted as a collateral bond will meet the following conditions:

860.231. The applicant will grant the Division a first mortgage, first deed of trust, or perfected first lien security interest in real property with a right to sell or otherwise dispose of the property in the event of forfeiture under state law;

860.232. In order for the Division to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant will submit a schedule of the real property which will be mortgaged or pledged to secure the obligations under the indemnity agreement. The list will include:

860.232.1. A description of the property;

860.232.2. The fair market value as determined by an independent appraisal conducted by a certified appraiser approved by the Division; and

860.232.3. Proof of possession and title to the real property;

860.233. The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this section will not be disturbed under any permit while it is serving as security under this section.

860.240. Cash accounts will be subject to the following conditions:

860.241. The Division may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally insured or equivalently

protected accounts made payable upon demand to, or deposited directly with, the Division. The total bond including the cash account will not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with R645-301-880;

860.242. Any interest paid on a cash account will be retained in the account and applied to the bond value of the account unless the Division has approved the payment of interest to the operator;

860.243. Certificates of deposit may be substituted for a cash account with the approval of the Division; and

860.244. The Division will not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

860.250. Bond Value of Collateral.

860.251. The estimated bond value of all collateral posted as assurance under this section will be subject to a margin which is the ratio of bond value to market values, as determined by the Division. The margin will reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations which might affect the net cash available to the Division to complete reclamation.

860.252. The bond value of collateral may be evaluated at any time, but it will be evaluated as part of the permit renewal and, if necessary, the performance bond amount increased or decreased. In no case will the bond value of collateral exceed the market value.

860.260. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, will request the notification in writing to the Division at the time collateral is offered.

860.300. Self-Bonding.

860.310. Definitions. Terms used in self-bonding are defined under R645-100-200.

860.320. The Division may accept a self bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:

860.321. The applicant designates a suitable agent, resident within the state of Utah, to receive service of process;

860.322. The applicant has been in continuous operation as a business entity for a period of not less than five years. Continuous operation will mean that business was conducted over a period of five years immediately preceding the time of application:

860.322.1. The Division may allow a joint venture or syndicate with less than five years of continuous operation to qualify under this requirement if each member of the joint venture or syndicate has been in continuous operation for at least five years immediately preceding the time of application;

860.322.2. When calculating the period of continuous operation, the Division may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed coal mining and reclamation operations;

860.323. The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

860.323.1. The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

860.323.2. The applicant has a tangible net worth of at least \$10 million, a ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater; or

860.323.3. The applicant's fixed assets in the United States total at least \$20 million and the applicant has a ratio of total

liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater; and

860.324. The applicant submits:

860.324.1. Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

860.324.2. Unaudited financial statements for completed quarters in the current fiscal year;

860.324.3. Additional unaudited information as requested by the Division; and

860.324.4. Annual reports for the five years immediately preceding the time of application.

860.330. The Division may accept a written guarantee for an applicant's self bond from a parent corporation guarantor, if the guarantor meets the conditions of R645-301-860.321 through R645-301-860.324 as if it were the applicant. Such a written guarantee will be referred to as a "corporate guarantee." The terms of the corporate guarantee will provide for the following:

860.331. If the applicant fails to complete the reclamation plan, the guarantor will do so or the guarantor will be liable under the indemnity agreement to provide funds to the Division sufficient to complete the reclamation plan, but not to exceed the bond amount;

860.332. The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the Division at least 90 days in advance of the cancellation date, and the Division accepts the cancellation; and

860.333. The cancellation may be accepted by the Division if the applicant obtains a suitable replacement bond before the cancellation date or if the lands for which the self bond, or portion thereof, was accepted have not been disturbed.

860.340. The Division may accept a written guarantee for an applicant's self bond from any corporate guarantor, whenever the applicant meets the conditions of R645-301-860.321, R645-301-860.322, and R645-301-860.324 and the guarantor meets the conditions of R645-301-860.321 through R645-301-860.324 as if it were the applicant. Such a written guarantee will be referred to as a "nonparent corporate guarantee." The terms of this guarantee will provide for compliance with the conditions of R645-301-860.331 through R645-301-860.333. The Division may require the applicant to submit any information specified in R645-301-860-323 in order to determine the financial capabilities of the applicant.

860.350. For the Division to accept an applicant's self bond, the total amount of the outstanding and proposed self bonds of the applicant for coal mining and reclamation operations will not exceed 25 percent of the applicant's tangible net worth in the United States. For the Division to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self bonds and guaranteed self bonds for surface coal mining and reclamation operations will not exceed 25 percent of the guarantor's tangible net worth in the United States. For the Division to accept a nonparent corporate guarantee, the total amount of the nonparent corporate guarantor's present and proposed self bonds and guaranteed self bonds will not exceed 25 percent of the guarantor's tangible net worth in the United States.

860.360. If the Division accepts an applicant's self bond, an indemnity agreement will be submitted subject to the following requirements:

860.361. The indemnity agreement will be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and will bind each jointly and severally;

860.362. Corporations applying for a self bond, and parent and nonparent corporations guaranteeing an applicant's self bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Division along with an affidavit certifying that such an agreement is valid under all applicable federal and Utah laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self bond and execute the indemnity agreement.

860.363. If the applicant is a partnership, joint venture or syndicate, the agreement will bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant;

860.364. Pursuant to R645-301-880.900, the applicant, parent or nonparent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the Division an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.

860.365. The indemnity agreement when under forfeiture will operate as a judgment against those parties liable under the indemnity agreement.

860.370. The Division may require self-bonded applicants, parent and nonparent corporate guarantors to submit an update of the information required under R645-301-860.323 and R645-301-860-324 within 90 days after the close of each fiscal year following the issuance of the self bond or corporate guarantee.

860.380. If at any time during the period when a self bond is posted, the financial conditions of the applicant, parent, or nonparent corporate guarantor change so that the criteria of R645-301-860.323 and R645-301-860.340 are not satisfied, the permittee will notify the Division immediately and will within 90 days post an alternate form of bond in the same amount as the self bond. Should the permittee fail to post an adequate substitute bond, the provisions of R645-301-840.500 will apply.

870. Replacement of Bonds.

870.100. The Division may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

870.200. The Division will not release existing performance bonds until the permittee has submitted, and the Division has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section will not constitute a release of bond under R645-301-880.100 through R645-301-880.800.

880. Requirement to Release Performance Bonds.

880.100. Bond release application.

880.110. The permittee may file an application with the Division for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the Division in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation will be identified in the approved mining and reclamation plan.

880.120. Within 30 days after an application for bond release has been filed with the Division, the operator will submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the coal mining and reclamation operations. The advertisement will be considered part of any bond release application and will contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan and the name and address of the Division to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to R645-301-880.600 and

R645-301-880.800. In addition, as part of any bond release application, the applicant will submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

880.130. The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

880.200. Inspection by the Division.

880.210. Upon receipt of the bond release application, the Division will, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation will consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution and the estimated cost of abating such pollution. The surface owner, agent or lessee will be given notice of such inspection and may participate with the Division in making the bond release inspection. The Division may arrange with the permittee to allow access to the permit area, upon request of any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

880.220. Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to R645-301-880.600, or, within 30 days after a public hearing has been held pursuant to R645-301-880.600, the Division will notify in writing the permittee, the surety or other persons with an interest in bond collateral who have requested notification under R645-301-860.260 and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, if its decision to release or not to release all or part of the performance bond.

880.300. The Division may release all or part of the bond for the entire permit area if the Division is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II and III:

880.310. At the completion of Phase I, after the operator completes the backfilling and regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area;

880.320. At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the Division will retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in UCA 40-10-17(2)(t) of the Act for reestablishing revegetation. No part of the bond or deposit will be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by UCA 40-10-17(2)(j) of the Act and by R645-301-751 or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to UCA 40-10-11(4) of the Act and R645-301-200. Where a silt dam is to be retained as a permanent impoundment pursuant to R645-301-700, the Phase

If portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the Division; and

880.330. At the completion of Phase III, after the operator has completed successfully all surface coal mining and reclamation operations, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in R645-301-357. However, no bond will be fully released under provisions of this section until reclamation requirements of the Act and the permit are fully met.

880.400. If the Division disapproves the application for release of the bond or portion thereof, the Division will notify the permittee, the surety, and any person with an interest in collateral as provided for in R645-301-860.260, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

880.500. When an application for total or partial bond release is filed with the Division, the Division will notify the municipality in which the coal mining and reclamation activities are located by certified mail at least 30 days prior to the release of all or a portion of the bond.

880.600. Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, will have the right to file written objections to the proposed release from bond with the Division within 30 days after the last publication of the notice required by R645-301-880.120. If written objections are filed and a hearing is requested, the Division will inform all the interested parties of the time and place of the hearing and will hold a public hearing within 30 days after receipt of the request for the hearing. The date, time and location of the public hearing will be advertised by the Division in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing will be held in the locality of the coal mining and reclamation operations from which bond release is sought, or at the location of the Division office, at the option of the objector.

880.700. For the purpose of the hearing under R645-301-880.600, the Division will have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing will be made and a transcript will be made available on the motion of any party or by order of the Division.

880.800. Without prejudice to the right of an objector or the applicant, the Division may hold an informal conference as provided in UCA 40-10-13(2)(b) of the Act to resolve such written objections. The Division will make a record of the informal conference unless waived by all parties, which will be accessible to all parties. The Division will also furnish all parties of the informal conference with a written finding of the Division based on the informal conference and the reasons for said finding.

880.900. Forfeiture of Bonds.

880.910. If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the Division will take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

880.911. Send written notification by certified mail, return

receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond including the reasons for the forfeiture and the amount to be forfeited. The amount will be based on the estimated total cost of achieving the reclamation plan requirements;

880.912. Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to:

880.912.1. Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan and the State Program and a demonstration that such party has the ability to satisfy the conditions; or

880.912.2. The Division may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the Division may approve partial release authorized under R645-301-880.100 through R645-301-880.800, no surety liability will be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of R645-301-820.300.

880.920. In the event forfeiture of the bond is required by this section, the Division will:

880.921. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the Division, or if such appeal, if taken, is unsuccessful; and

880.922. Use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

880.930. Upon default, the Division may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Bond liability will extend to the entire permit area under conditions of forfeiture.

880.931. In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator will be liable for remaining costs. The Division may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

880.932. In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds will be returned by the Division to the party from whom they were collected.

890. Terms and Conditions for Liability Insurance.

890.100. The Division will require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in Utah certifying that the applicant has a public liability insurance policy in force for the coal mining and reclamation activities for which the permit is sought. Such policy will provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the coal mining and reclamation operations, including the use of explosives and who are entitled to compensation under the applicable provisions of state law. Minimum insurance coverage for bodily injury and property damage will be \$300,000 for each occurrence and \$500,000 aggregate.

890.200. The policy will be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations under this chapter.

890.300. The policy will include a rider requiring that the

insurer notify the Division whenever substantive changes are made in the policy including any termination or failure to renew.

890.400. The Division may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable state self-insurance requirements approved as part of the State Program and the requirements of R645-301-890.100 through R645-301-890.300.

KEY: reclamation, coal mines

May 23, 2012

40-10-1 et seq.

Notice of Continuation September 6, 2016

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-302. Coal Mine Permitting: Special Categories and Areas of Mining.****R645-302-100. General.**

110. Introduction. The rules given under R645-302-200 through R645-302-300 establish the minimum requirements for approval to conduct coal mining and reclamation operations under designated special categories and areas of mining. All provisions of R645-301 apply to the designated special categories and areas of mining, unless otherwise specifically provided under R645-302.

120. Objective. The objective of R645-302 is to ensure that special categories and areas of mining are approved only after the Division receives information that shows the coal mining and reclamation operations will be conducted according to the applicable requirements of the Act, R645-301 and any other applicable portions of the State Program.

130. Applicability. Special categories and areas of mining that occur within an approved permit area will be evaluated and approved by the Division within the context of the attendant permit or permit application. Special categories and areas of mining that occur external to an approved permit area will require a discrete permit application for review by the Division. Special categories and areas of mining include all those types and areas of mining described in R645-302-200 through R645-302-320.

R645-302-200. Special Categories of Mining.

The rules in R645-302-200 present the requirements for information to be included in the permit application to conduct coal mining and reclamation operations for designated special categories of mining and present procedures to process said permit applications.

210. Experimental Practices Mining.

211. Experimental practices provide a variance from environmental protection performance standards of the Act, of R645-301, and the State Program for experimental or research purposes, or to allow an alternative postmining land use, and may be undertaken if they are approved by the Division and the Office and if they are incorporated in a permit or permit change issued in accordance with the requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-280, R645-302-310, R645-302-320, or R645-303.

212. An application for an experimental practice will contain descriptions, maps, plans, and data which show:

212.100. The nature of the experimental practice, including a description of the performance standards for which variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted;

212.200. How use of the experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreation facilities) on an experimental basis;

212.300. That the experimental practice:

212.310. Is potentially more, or at least as, environmentally protective, during and after coal mining and reclamation operations, as would otherwise be required by standards promulgated under R645-301 and R645-302; and

212.320. Will not reduce the protection afforded public health and safety below that provided by the requirements of R645-301 and R645-302; and

212.400. That the applicant will conduct monitoring of the effects of the experimental practice. The monitoring program will ensure the collection, analysis, and reporting of reliable data that are sufficient to enable the Division and the Office to:

212.410. Evaluate the effectiveness of the experimental practice; and

212.420. Identify, at the earliest possible time, potential

risk to the environment and public health and safety which may be caused by the experimental practice during and after coal mining and reclamation operations.

213. Applications for experimental practices will comply with the public notice requirements of R645-300-120.

214. No application for an experimental practice under R645-302-210 will be approved until the Division first finds in writing and the Office then concurs that:

214.100. The experimental practice encourages advances in coal mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis;

214.200. The experimental practice is potentially more, or at least as, environmentally protective, during and after coal mining and reclamation operations, as would otherwise be required by standards promulgated under R645-301 and R645-302;

214.300. The coal mining and reclamation operations approved for a particular land use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice; and

214.400. The experimental practice does not reduce the protection afforded public health and safety below that provided by standards promulgated under R645-301 and R645-302.

215. Experimental practices granting variances from the special environmental protection performance standards of Sections 515 and 516 of the Federal Act applicable to prime farmlands will be approved only after consultation with the NRCS.

216. Each person undertaking an experimental practice will conduct the periodic monitoring, recording and reporting program set forth in the application, and will satisfy such additional requirements as the Division or the Office may impose to ensure protection of the public health and safety and the environment.

217. Each experimental practice will be reviewed by the Division at a frequency set forth in the approved permit, but no less frequently than every two and one-half years. After review, the Division may require such reasonable modifications of the experimental practice as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the Division will be sent to the permittee and will be subject to the provisions for administrative and judicial review of R645-300-200.

218. Revisions or amendments to an experimental practice will be processed in accordance with the requirements of R645-303-220 and approved by the Division. Any revisions which propose significant alterations in the experimental practice will, at a minimum, be subject to notice, hearing, and public participation requirements of R645-300-120 and concurrence by the Office. Revisions that do not propose significant alterations in the experimental practice will not require concurrence by the Office.

220. Mountaintop Removal Mining.

221. R645-302-220 applies to any person who conducts or intends to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES by mountaintop removal mining.

222. Mountaintop removal mining means SURFACE COAL MINING AND RECLAMATION ACTIVITIES, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in R645-302-227.500, by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of R645-302-220.

223. The Division may issue approval to conduct mountaintop removal mining, without regard to the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, and R645-302-234 to restore the lands disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

223.100. The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if:

223.110. After consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the Division to constitute an equal or better economic or public use of the affected land compared with the premining use;

223.120. The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of R645-301-413.100 through R645-301-413.300;

223.130. The applicant has presented specific plans for the proposed postmining land use and appropriate assurances that such use will be:

223.131. Compatible with adjacent land uses;

223.132. Obtainable according to data regarding expected need and market;

223.133. Assured of investment in necessary public facilities;

223.134. Supported by commitments from public agencies where appropriate;

223.135. Practicable with respect to private financial capability for completion of the proposed use;

223.136. Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

223.137. Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

223.140. The proposed use would be consistent with adjacent land uses and existing Utah and local land use plans and programs; and

223.150. The Division has provided, in writing, an opportunity of not more than 60 days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and to any Utah or federal agency which the Division, in its discretion, determines to have an interest in the proposed use;

223.200. The applicant demonstrates that in place of restoration of the land to be affected to the approximate original contour under R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, and R645-302-234, the SURFACE COAL MINING AND RECLAMATION ACTIVITY will be conducted in compliance with the requirements of R645-302-227.

223.300. The requirements of R645-302-227 are made a specific condition of the permit;

223.400. All other requirements of the State Program are met by the proposed operations; and

223.500. The application to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES clearly identifies mountaintop removal mining.

224. Any permits incorporating a variance issued under R645-302-220 will be reviewed by the Division to evaluate the progress and development of the SURFACE COAL MINING AND RECLAMATION ACTIVITIES to establish that the operator is proceeding in accordance with the terms of the variance:

224.100. Within the sixth month preceding the third year from the date of its issuance;

224.200. Before each permit renewal; and

224.300. Not later than the middle of each permit term.

225. Any review required under R645-302-224 need not be held if the permittee has demonstrated and the Division finds, in writing, within three months before the scheduled review, that all SURFACE COAL MINING AND RECLAMATION ACTIVITIES under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of the State Program.

226. The terms and conditions of a permit that includes mountaintop removal mining may be modified at any time by the Division, if it determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of the State Program.

227. Performance Standards. Under the State Program, SURFACE COAL MINING AND RECLAMATION ACTIVITIES may be conducted under a variance from the requirement of R645-301 and R645-302 for restoring affected areas to their approximate original contour, if:

227.100. The Division grants the variance under a permit to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES, in accordance with R645-302-220;

227.200. The activities involve the mining of an entire coal seam running through the upper fraction of a mountain, ridge, or hill, by removing all of that overburden and creating a level plateau or gently rolling contour with no highwalls remaining;

227.300. An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed and approved for the affected land;

227.400. The alternative land use requirements of R645-301-413.100 through R645-301-413.300 and all applicable requirements of R645-301 and R645-302 and the State Program, other than the requirement to restore affected areas to their approximate original contour, are met;

227.500. An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden, are retained to prevent slides and erosion, except that the Division may allow an exemption to the retention of the coal barrier requirement if the following conditions are satisfied:

227.510. The proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or

227.520. A coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier;

227.600. The final graded slopes on the mined area are less than 1v:5h, so as to create a level plateau or gently rolling configuration, and the outcrops of the plateau do not exceed 1v:2h except where engineering data substantiates, and the Division finds, in writing, and includes in the permit to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES under R645-302-220 that a minimum static safety factor of 1.5 will be attained;

227.700. The resulting level or gently rolling contour is graded to drain inward from the outslope, except at specified points where it drains over the outslope in stable and protected channels. The drainage will not be through or over a valley or head-of-hollow fill and natural watercourses below the lowest coal seam mined will not be damaged;

227.800. All waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, are covered with nontoxic spoil to prevent pollution and achieve the approved postmining land use; and

227.900. Spoil is placed on the mountaintop bench as necessary to achieve the postmining land use approved under R645-302-227.300 and R645-302-227.400. All excess spoil material not retained on the mountaintop will be placed in

accordance with applicable requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-731.100 through R645-301-731.522, R645-301-731.800, R645-301-742.300, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

230. Steep Slope Mining.

231. The rules in R645-302-230 apply to any person who conducts or intends to conduct steep slope coal mining and reclamation operations, except:

231.100. Where an operator proposes to conduct coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the coal mining and reclamation operation proceeds;

231.200. Where a person obtains a permit under the provisions of R645-302-220; or

231.300. To the extent that a person obtains a permit incorporating a variance under R645-302-270.

232. Any application for a permit to conduct coal mining and reclamation operations covered by R645-302-230 will contain sufficient information to establish that the operations will be conducted in accordance with the requirements of R645-302-234.

233. No permit will be issued for any coal mining and reclamation operations covered by R645-302-230, unless the Division finds, in writing, that in addition to meeting all other requirements of R645-301 and R645-302, the operation will be conducted in accordance with the requirements of R645-302-234.

234. Backfilling and Grading.

234.100. Coal mining and reclamation operations on steep slopes will be conducted so as to meet the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, except where mining is conducted on flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area or where operations are conducted in accordance with R645-302-227.

234.200. The following materials will not be placed on the downslope except as provided for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES under R645-301-553:

234.210. Spoil;

234.220. Waste materials of any type;

234.230. Debris, including that from clearing and grubbing; and

234.240. Abandoned or disabled equipment.

234.300. Land above the highwall will not be disturbed unless the Division finds that this disturbance will facilitate compliance with the environmental protection standards of R645-301 and R645-302 and the disturbance is limited to that necessary to facilitate compliance.

234.400. Woody materials will not be buried in the backfilled area unless the Division determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

240. Auger Mining and Remining Operations.

241. The Rules given under R645-302-240 apply to any person who conducts or intends to conduct coal mining and reclamation operations utilizing augering operations.

241.100. To the extent not otherwise addressed in the permit application, the applicant will identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site,

a record review of past mining at the site, and environmental sampling tailored to current site conditions.

241.200. With regard to potential environmental and safety problems referred to in R645-302-241.100, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.

242. Any application for a permit that includes operations covered by R645-302-240 will contain, in the mining and reclamation plan, a description of the augering or remining methods to be used and the measures to be used to comply with R645-302-244 and R645-302-245.

243. No permit will be issued for any operations covered by R645-302-240 unless the Division finds, in writing, that in addition to meeting all other applicable requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303, the operation will be conducted in compliance with R645-302-244 and R645-302-245.

244. The Division may prohibit auger mining, if necessary, to:

244.100. Maximize the utilization, recoverability, or conservation of the solid-fuel resource; or

244.200. Protect against adverse water-quality impacts.

245. Performance Standards.

245.100. Coal Recovery.

245.110. Auger mining will be conducted so as to maximize the utilization and conservation of the coal in accordance with R645-301-522.

245.120. Auger mining will be planned and conducted to maximize recoverability of mineral reserves remaining after coal mining and reclamation operations are completed.

245.130. Each person who conducts auger mining operations will leave areas of undisturbed coal, as approved by the Division, to provide access for future underground coal mining and reclamation activities to coal reserves remaining after augering is completed, unless it is established that the coal reserves have been depleted or are so limited in thickness or extent that it will not be practicable to recover the remaining coal. This determination will be made by the Division upon presentation of appropriate technical evidence by the operator.

245.200. Hydrologic Balance.

245.210. Auger mining and remining operations will be planned and conducted to minimize disturbances to the prevailing hydrologic balance in accordance with the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800, and R645-301-751.

245.220. All auger holes, except as provided in R645-302-245.230, will be:

245.221. Sealed within 72 hours after completion with an impervious and noncombustible material, if the holes are discharging water containing acid- or toxic-forming material. If sealing is not possible within 72 hours, the discharge will be treated commencing within 72 hours after completion to meet applicable effluent limitations and water-quality standards until the holes are sealed; and

245.222. Sealed with an impervious noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the Division, if the holes are not discharging water containing acid- or toxic-forming material.

245.230. Auger holes need not be sealed with an impervious material so as to prevent drainage if the Division determines that:

245.231. The resulting impoundment of water may create a hazard to the environment or public health and safety; and

245.232. The drainage from the auger holes will:

245.232.1. Not pose a threat of pollution to surface water; and

245.232.2. Comply with the requirements of R645-301-

731.100 through R645-301-731.522, R645-301-731.800, and R645-301-751.

245.300. Subsidence Protection. Auger mining and re-mining operations will be conducted in accordance with the requirements of R645-301-525.210 and R645-301-525.230.

245.400. Backfilling and Grading.

245.410. General. Auger mining and re-mining operations will be conducted in accordance with the backfilling and grading requirements of R645-301-537.200 and R645-301-553.

245.420. Re-mining will comply with the requirements of R645-301-553.500 and R645-301-553.600. Where auger mining operations affect previously mined areas that were not reclaimed to the standards of the R645 Rules and the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the highwall, the highwall will be eliminated to the maximum extent technically practical in accordance with the following criteria:

245.421. The person who conducts the auger mining operation will demonstrate to the Division that the backfill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of at least 1.3;

245.422. All spoil generated by the auger mining operation and any associated SURFACE COAL MINING AND RECLAMATION ACTIVITIES, and any other reasonably available spoil will be used to backfill the area. Reasonably available spoil will include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment. For this purpose, the permit area will include spoil in the immediate vicinity of the auger mining operation;

245.423. The coal seam mined will be covered with a minimum of four feet of nonacid-, nontoxic-forming material and the backfill graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability;

245.424. Any remnant of the highwall will be stable and not pose a hazard to the public health and safety or to the environment; and

245.425. Spoil placed on the outslope during previous mining operations will not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

245.500. Protection of Underground Mining. Auger holes will not extend closer than 500 feet (measured horizontally) to any abandoned or active underground mine workings, except as approved in accordance with R645-301-513.700 and R645-301-523.200.

250. In Situ Processing Activities.

251. R645-302-250 applies to any person who conducts or intends to conduct coal mining and reclamation operations utilizing in situ processing activities.

252. Any application for a permit that includes operations covered by R645-302-250 will address all requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303 applicable to coal mining and reclamation operations. In addition, the mining and reclamation operations plan for operations involving in situ processing activities will contain information establishing how those operations will be conducted in compliance with the requirements of R645-302-254, including:

252.100. Delineation of proposed holes and wells and production zone for approval of the Division;

252.200. Specifications of drill holes and casings proposed to be used;

252.300. A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or

liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

252.400. Plans for monitoring surface and ground water and air quality as required by the Division.

253. No permit will be issued for operations covered by R645-302-250, unless the Division first finds, in writing, upon the basis of a complete application made in accordance with R645-302-252, that the operation will be conducted in compliance with all requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303.

254. Performance Standards.

254.100. The person who conducts in situ processing activities will comply with R645-301 and R645-302-254.

254.200. In situ processing activities will be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

254.210. Avoiding discharge of fluids into holes or wells, other than as approved by the Division;

254.220. Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the Division;

254.230. Avoiding annular injection between the wall of the drill hole and the casing; and

254.240. Preventing discharge of process fluid into surface waters.

254.300. Each person who conducts in situ processing activities will submit for approval as part of the application for permit under R645-302-250, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.

254.400. Each person who conducts in situ processing activities will prevent flow of the process recovery fluid:

254.410. Horizontally beyond the affected area identified in the permit; and

254.420. Vertically into overlying or underlying aquifers.

254.500. Each person who conducts in situ processing activities will restore the quality of affected ground water in the permit area and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

254.600. Monitoring.

254.610. Each person who conducts in situ processing activities will monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the Division under R645-301-731.100 through R645-301-731.522 and R645-301-731.800, to measure changes in the quantity and quality of water in surface and ground water systems in the permit area and in adjacent areas.

254.620. Air and water quality monitoring will be conducted in accordance with monitoring programs approved by the Division as necessary according to appropriate federal and Utah air and water quality standards.

260. Coal Processing Plants Not Located Within the Permit Area of a Mine.

261. R645-302-260 applies to any person who operates or intends to operate a coal processing plant outside the permit area of any coal mining and reclamation operation, other than such plants which are located at the site of ultimate coal use. Any person who operates such a processing plant will obtain a permit from the Division in accordance with the requirements of R645-302-260.

262. Any application for a permit that includes operations covered by R645-302-260 will contain an operation and reclamation plan which specifies plans, including descriptions, maps, and cross sections, of the construction, operation, maintenance, and removal of the processing plant and support facilities operated incident thereto or resulting therefrom. The plan will demonstrate that those operations will be conducted in compliance with R645-302-264.

263. No permit will be issued for any operation covered by R645-302-260, unless the Division finds in writing that, in addition to meeting all other applicable requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303, the operations will be conducted in compliance with the requirements of R645-302-264.

264. Performance Standards. Construction, operation, maintenance, modification, reclamation, and removal activities at coal processing plants will comply with the requirements listed below.

264.100. Signs and markers for the coal processing plant, coal processing waste disposal area, and water-treatment facilities will comply with R645-301-521.200.

264.200. Surface drainage will be controlled according to the following:

264.210. Any stream channel diversion will comply with R645-301-742.300;

264.220. Drainage from any disturbed area related to the coal processing plant will comply with R645-301-356.300, R645-301-356.400, R645-301-513.300, R645-301-532, R645-301-742.100 through R645-301-742.240, R645-301-744, and R645-301-763.200 and all discharges from these areas will meet the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800, and R645-301-751 and any other applicable Utah or federal law; and

264.230. Permanent impoundments associated with coal processing plants will meet the requirements of R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-542.400, R645-301-733.220 through R645-301-733.224, and R645-301-743. Dams constructed of or impounding coal processing waste will comply with R645-301-536.400 and R645-301-746.300.

264.300. Disposal of coal processing waste, noncoal mine waste, and excess spoil will comply with R645-301-210 through R645-301-212, R645-301-412.300, R645-301-512.210 through R645-301-512.230, R645-301-513.400, R645-301-513.800, R645-301-514.100, R645-301-514.200, R645-301-515.200, R645-301-528.310, R645-301-528.322 through R645-301-528.323, R645-301-528.320, R645-301-528.330, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536 through R645-301-536.200, R645-301-536.300 through R645-301-536.500, R645-301-536.900, R645-301-542.720 through R645-301-542.740, R645-301-553.240 through R645-301-553.250, R645-301-745.100, R645-301-745.300 through R645-301-745.400, R645-301-746.100 through R645-301-746.300, and R645-301-747.

264.400. Fish, wildlife, and related environmental values will be protected in accordance with R645-301-333, R645-301-342, and R645-301-358.

264.500. Support facilities related to the coal processing plant will comply with R645-301-526.220 and roads will comply with R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-532.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

264.600. Cessation of operations will be in accordance with R645-301-515.300 and R645-301-541.100 through R645-301-541.300.

264.700. Erosion and air pollution attendant to erosion

will be controlled in accordance with R645-301-244.100 and R645-301-244.300.

264.800. Adverse effects upon, or resulting from, nearby underground coal mining activities will be minimized by appropriate measures including, but not limited to, compliance with R645-301-513.700 and R645-301-523.200.

264.900. Reclamation will follow proper topsoil handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with R645-301-232 through R645-301-233.100, R645-301-234, R645-301-242, R645-301-244.200, R645-301-352 through R645-301-357, R645-301-413, R645-301-512.260, R645-301-537.200, R645-301-553, and R645-302-271.

270. Variances from Approximate Original Contour Restoration Requirements.

271. The Division may issue approval or, if applicable, a permit for nonmountaintop removal mining in steep slope areas which includes a variance from the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600 through R645-301-553.900, and R645-302-234 to restore the disturbed areas to their approximate original contour. The permit may contain such a variance only if the Division finds, in writing, that the applicant has demonstrated, on the basis of a complete application, that the following requirements are satisfied:

271.100. The alternative postmining land use requirements of R645-301-413.300 are met;

271.200. All applicable requirements of the State Program, other than the requirements to restore disturbed areas to their appropriate original contour are met;

271.300. After consultation with the appropriate land use agencies, if any, the potential use is shown to constitute an equal or better economic or public use;

271.400. Federal, Utah and local government agencies with an interest in the proposed land use have had an adequate period of time in which to review and comment on the proposed use;

271.500. After reclamation, the lands to be affected by the variance within the permit area will be suitable for an industrial, commercial, residential or public postmining land use (including recreational facilities);

271.600. The surface landowner of the lands within the permit area has knowingly requested, in writing, as part of the permit application, that a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential or public use (including recreational facilities). The request will be made separately from any surface owner consent given for the operations under R645-301-114 and will show an understanding that the variance could not be granted without the owner's request;

271.700. The watershed of lands within the proposed permit and adjacent areas will be improved by the coal mining and reclamation operations when compared with the condition of the watershed before mining or with its condition if the approximate original contour were to be restored. The watershed will be deemed improved only if:

271.710. The amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced, so as to improve the public or private uses or the ecology of such water, or flood hazards within the watershed containing the permit area will be reduced by reduction of the peak flow discharge from precipitation events or thaws; and

271.720. The total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water;

271.800. Engineering. The proposed design plan for the

variance will be prepared and certified as described under R645-301-512.260. The proposed design plan will also meet the following requirements:

271.810. Unless the highwall is determined to be retained under R645-301-553.650, the highwall will be completely backfilled with spoil material, in a manner which results in a static factor of safety at least 1.3, using standard geotechnical analysis; and

271.820. Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and R645 Rules will be placed on the mine bench. All spoil not retained on the bench will be placed in accordance with R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400; and

271.900. After Division approval, the watershed of the permit and adjacent areas is shown to be improved.

272. If a variance is granted under R645-302-270:

272.100. The requirements of R645-302-270 will be included as a specific condition of the permit; and

272.200. The permit will be specifically marked as containing a variance from approximate original contour.

273. A permit incorporating a variance under R645-302-270 will be reviewed by the Division at least every 30 months following the issuance of the permit to evaluate the progress and development of the coal mining and reclamation operations to establish that the operator is proceeding in accordance with the terms of the variance.

274. If the permittee demonstrates to the Division that the coal mining and reclamation operation has been, and continues to be, conducted in compliance with the terms and conditions of the permit, the requirements of the Act, the R645 Rules, and the State Program, the review specified in R645-302-273 need not be held.

275. The terms and conditions of a permit incorporating a variance under R645-302-270 may be modified at any time by the Division, if it determines that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the requirements of the State Program.

280. Variances for Delay in Contemporaneous Reclamation Requirement in Combined SURFACE and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

281. Applicability. R645-302-280 applies to any person or persons conducting or intending to conduct combined SURFACE and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES where a variance is requested from the contemporaneous reclamation requirements of R645-301-352.

282. Application Contents for Variances. Any person desiring a variance under R645-302-280 will file with the Division complete applications for both the SURFACE COAL MINING AND RECLAMATION ACTIVITIES and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES which are to be combined. The reclamation and operation plans for these permits will contain appropriate narratives, maps, and plans, which:

282.100. Show why the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES are necessary or desirable to assure maximum practical recovery of the coal;

282.200. Show how multiple future disturbances of surface lands or waters will be avoided;

282.300. Identify the specific surface areas for which a variance is sought and the sections of the State Program from

which a variance is being sought;

282.400. Show how the activities will comply with R645-301-513.700 and R645-301-523.200 and other applicable requirements of the State Program;

282.500. Show why the variance sought is necessary for the implementation of the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES;

282.600. Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of disturbed areas is delayed; and

282.700. Show how off-site storage of spoil will be conducted to comply with the requirements of the Act, R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, R645-301-745.400, and the State Program.

283. Issuance of Permit. A permit incorporating a variance under R645-302-280 may be issued by the Division if it first finds, in writing, upon the basis of a complete application filed in accordance with R645-302-280, that:

283.100. The applicant has presented, as part of the permit application, specific, feasible plans for the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES;

283.200. The proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

283.300. The applicant has satisfactorily demonstrated that the applications for the SURFACE COAL MINING AND RECLAMATION ACTIVITIES and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES conform to the requirements of the State Program;

283.400. The disturbed area proposed for the variance has been shown by the applicant to be necessary for implementing the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES;

283.500. No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by R645-301, R645-302, and the State Program;

283.600. The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of R645-301-513.700, R645-301-532.200, and the State Program;

283.700. Provisions for off-site storage of spoil will comply with the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, R645-301-745.400, and the State Program;

283.800. Liability under the performance bond required to be filed by the applicant with the Division pursuant to R645-301-800 and the State Program will be for the duration of the UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and until all requirements of R645-301-800 and the State Program have been complied with; and

283.900. The permit for the coal mining and reclamation operation contains specific conditions:

283.910. Delineating the particular surface areas for which a variance is authorized;

283.920. Identifying the applicable provisions of R645 Rules and the State Program; and

283.930. Providing a detailed schedule for compliance

with the provisions of R645-302-280.

284. Review of Permits Containing Variances. Permits to conduct coal mining and reclamation operations that contain variances granted under R645-302-280 will be reviewed by the Division no later than three years from the dates of issuance of the permit and any permit renewals.

290. Small Operator Assistance Program (SOAP).

291. General Information on SOAP. The rules in R645-302-290 describe the Small Operator Assistance Program (SOAP) and govern the procedures for providing assistance to eligible small mine operators who request assistance under Section 40-10-10(3) of the Act, for:

291.100. The determination of the probable hydrologic consequences of mining and reclamation, under Section 40-10-10(2)(c) of the Act; and

291.200. The statement of physical and chemical analyses of test borings or core samples, under Section 40-10-10(2)(d) of the Act.

292. Objectives. The objectives of this part are to meet the intent of Section 40-10-10(3) of the Act by:

292.100. Providing financial and other necessary assistance to qualified small operators; and

292.200. Assuring that the Division will have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the area and particularly upon water availability.

293. Financial Assistance. The Division will provide financial and other assistance under Section 40-10-10(3) of the Act, contingent upon receipt of funding.

293.100. Assistance Funding.

293.110. Use of Funds. Funds specifically authorized for SOAP will be used to provide the services specified in R645-302-299 and will not be used to cover administrative expenses.

293.120. Allocation of Funds. The Division Mined Land Reclamation Program Administrator, hereinafter referred to as the "Program Administrator", will establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to R645-302-290.

293.200. Applicant Liability.

293.210. The applicant will reimburse the Division for the cost of the laboratory services performed pursuant to R645-302-290 if:

293.211. The applicant submits false information, fails to submit a permit application within one year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;

293.212. The program administrator finds that the applicant's actual and attributed annual production of coal for all locations exceeds 100,000 tons during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first five years after issuance of the permit whichever is shorter; or

293.213. The permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 100,000 ton annual production limit during any consecutive 12-month period of the remaining term of the permit. Under R645-302-293.213 the applicant and its successor are jointly and severally obligated to reimburse the Division.

293.220. The Division may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

294. Responsibilities of the Division. The Division will:

294.100. Review requests for assistance and determine qualified operators;

294.200. Develop and maintain a list of qualified laboratories, and select and pay laboratories for services rendered;

294.300. Conduct periodic on-site evaluations of SOAP activities with the operator;

294.400. Participate with the Office in data coordination activities with the U.S. Geological Survey, U.S. Environmental Protection Agency, and other appropriate agencies or institutions; and

294.500. Insure that applicable equal opportunity in employment provisions are included within any contract or other procurement documents.

295. Qualified Laboratories.

295.100. Basic Qualifications. To be designated a qualified laboratory, a firm will demonstrate that it:

295.110. Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed;

295.120. Has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods;

295.130. Meets applicable Federal or Utah safety and health requirements;

295.140. Has analytical, monitoring and measuring equipment capable of meeting applicable standards;

295.150. Has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods in accordance with the requirements of R645-301-623 through R645-301-623.200, R645-301-624 through R645-301-626, R645-301-723, R645-301-724.100 through R645-301-724.320, R645-301-724.500, R645-301-725 through R645-301-729.200, R645-301-731, R645-301-731.210 through R645-301-731.213, R645-301-731.220 through R645-301-731.223, and any other applicable provisions of the R645 Rules. Other appropriate methods or guidelines for data acquisition may be approved by the program administrator; and

295.160. Has the capability of performing services for either the determination or statement referenced in R645-302-299.200.

295.200. Subcontractors. Subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the Division.

296. Eligibility for Assistance.

296.100. Applicants are eligible for assistance if they:

296.110. Intend to apply for a permit pursuant to the State Program;

296.120. Establish that their probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of their permit or during the first five years after issuance of their permit, whichever period is shorter, will not exceed 100,000 tons. Production from the following operations will be attributed to the applicant:

296.121. The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a five percent interest;

296.122. The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than five percent of the applicant's operation;

296.123. All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management; and

296.124. All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them;

296.130. Are not restricted in any manner from receiving a permit under the State Program; and

296.140. Do not organize or reorganize their company solely for the purpose of obtaining assistance under the SOAP.

296.200. The Division may provide alternate criteria or procedures for determining the eligibility of an operator for assistance under SOAP, provided that such criteria may not be used as a basis for grant requests in excess of that which would be authorized under the criteria of R645-302-296.100.

297. Filing for Assistance. Each application for assistance will include the following information:

297.100. A statement of the operator's intent to file a permit application;

297.200. The names and addresses of:

297.210. The permit applicant; and

297.220. The operator if different from the applicant;

297.300. A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under R645-302-296. The schedule will include for each location:

297.310. The operator or company name under which coal is or will be mined;

297.320. The permit number and MSHA number;

297.330. The actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant under R645-302-296; and

297.340. The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit;

297.400. A description of:

297.410. The proposed method of coal mining;

297.420. The anticipated starting and termination dates of coal mining and reclamation operations;

297.430. The number of acres of land to be affected by the proposed coal mining and reclamation operation; and

297.440. A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated.

297.500. A U.S. Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail which clearly shows:

297.510. The area of land to be affected;

297.520. The location of any existing or proposed test borings; and

297.530. The location and extent of known workings of any underground mines; and

297.600. Copies of documents which show that:

297.610. The applicant has a legal right to enter and commence mining within the permit area; and

297.620. A legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

298. Application Approval and Notice.

298.100. If the program administrator finds the applicant eligible, then the applicant will be informed in writing that the application is approved.

298.200. If the program administrator finds the applicant ineligible, then the applicant will be informed in writing that the application is denied. The notice of denial will state the reasons for denial.

299. Program Services and Data Requirements.

299.100. To the extent possible with available funds, the program administrator will select and pay a qualified laboratory to make the determination and statement referenced in R645-302-299.200 for eligible operators who request assistance.

299.200. The program administrator will determine the data needed for each applicant or group of applicants. Data collected and the results provided to the program administrator

will be sufficient to satisfy the requirements for:

299.210. The determination of the probable hydrologic consequences of the coal mining and reclamation operations in the proposed permit area and adjacent areas in accordance with R645-301-728 and any other applicable provisions of the R645 Rules; and

299.220. The statement of the results of test borings or core samplings for the proposed permit area in accordance with R645-301-624 and any other applicable provisions of the R645 Rules.

299.300. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

299.400. Data collected under this program will be made publicly available in accordance with R645-300-124.

R645-302-300. Special Areas of Mining.

The rules in R645-302-300 present the minimum requirements for information to be included in the permit application to conduct coal mining and reclamation operations for mining in designated special areas and present procedures to process said permit applications.

310. Prime Farmland. R645-302-300 applies to any person who conducts or intends to conduct coal mining and reclamation operations on prime farmlands historically used for cropland.

311. The rules given under R645-302-300 do not apply to:

311.100. Lands on which coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

311.200. Lands on which coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

311.300. Lands included in any existing coal mining and reclamation operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

311.310. Such lands are part of a single continuous coal mining and reclamation operation begun under a permit issued before August 3, 1977; and

311.320. The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

311.330. The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining and reclamation activity) begun under a permit issued prior to August 3, 1977.

312. For purposes of R645-302-300:

312.100. A pit will be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing; and

312.200. A single continuous SURFACE COAL MINING AND RECLAMATION ACTIVITY is presumed to consist only of a single continuous mining pit under permit issued prior to August 3, 1977, but may include noncontiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the noncontiguous parcels were part of a single permitted operation. Clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one SURFACE COAL MINING AND RECLAMATION ACTIVITY.

313. Application Contents--Reconnaissance Inspection. All permit applications, whether or not prime farmland is present, will include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The Division in consultation with the NRCS will determine the nature and extent of the required reconnaissance

inspection.

313.100. If the reconnaissance inspection establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant will submit a statement that no prime farmland is present. The statement will identify the basis upon which such a conclusion was reached.

313.200. If the reconnaissance inspection indicates that land within the proposed permit area may be prime farmland historically used for cropland, the applicant will determine if a soil survey exists for those lands and whether soil mapping units in the permit area have been designated as prime farmland. If no soil survey exists, the applicant will have a soil survey made of the lands within the permit area which the reconnaissance inspection indicates could be prime farmland. Soil surveys of the detail used by the NRCS for operational conservation planning will be used to identify and locate prime farmland soils.

313.210. If the soil survey indicates that no prime farmland soils are present within the proposed permit area, R645-302-313.100 will apply.

313.220. If the soil survey indicates that prime farmland soils are present within the proposed permit area, R645-302-314 will apply.

314. Application Contents--Prime Farmland. All permit applications for areas in which prime farmland has been identified within the proposed permit area will include the following:

314.100. A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 "Soil Taxonomy" (U.S. Soil Conservation Service, 1975), as amended on March 22, 1982 and October 5, 1982 and 18, "Soil Survey Manual" (U.S. Soil Conservation Service, 1951) as amended on December 18, 1979, May 7, 1980, May 9, 1980, September 11, 1980, June 9, 1981, June 29, 1981, November 16, 1982. The NRCS establishes the standards of the National Cooperative Soil Survey and maintains a National Soils Handbook which gives current acceptable procedures for conducting soil surveys. This National Soils Handbook is available for review at area and Utah NRCS offices.

314.110. U.S. Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they respectively existed on October 5, 1982, and November 16, 1982.

314.120. The soil survey will include a description of soil mapping units and a representative soil profile as determined by the NRCS, including, but not limited to, soil-horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the State Conservationist, NRCS. The Division may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil-reconstruction standards of R645-302-317.

314.200. A plan for soil reconstruction, replacement, and stabilization for the purpose of establishing the technological capability of the mine operator to comply with the requirements of R645-302-317.

314.300. Scientific data, such as agricultural-school studies, for areas with comparable soils, climate, and management that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area; and

314.400. The productivity prior to mining, including the

average yield of food, fiber, forage, or wood products obtained under a high level of management.

315. Consultation with Secretary of Agriculture. The Secretary of Agriculture has responsibilities with respect to prime farmland soils and has assigned the prime farmland responsibilities arising under the Federal Act to the Chief of the NRCS. The NRCS will carry out consultation and review through the State Conservationist located in Utah.

315.100. The State Conservationist will provide to the Division a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland soil descriptions.

315.200. The State Conservationist will assist the Division in describing the nature and extent of the reconnaissance inspection required under R645-302-313.

315.300. Before any permit is issued for areas that include prime farmland, the Division will consult with the State Conservationist. The State Conservationist will provide for the review of, and comment on, the proposed method of soil reconstruction in the plan submitted under R645-302-314. If the State Conservationist considers those methods to be inadequate, then revisions will be suggested to the Division which result in more complete and adequate reconstruction.

316. Issuance of Permit. A permit to conduct coal mining and reclamation operations that include mining and reclamation on designated special areas of prime farmland may be granted by the Division, if it first finds, in writing, upon the basis of a complete application, that:

316.100. The approved proposed postmining land use of these prime farmlands will be cropland;

316.200. The permit incorporates as specific conditions the contents of the plan submitted under R645-302-314, after consideration of any revisions to that plan suggested by the State Conservationist under R645-302-315.300;

316.300. The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

316.400. The proposed coal mining and reclamation operations will be conducted in compliance with the requirements of R645-302-317 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the State Program.

316.500. The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the Division and the consent of all affected property owners within the permit area must be obtained.

317. Prime Farmland Performance Standards.

317.100. Scope and Purpose. The rules under R645-302-317 set forth special environmental protection performance, reclamation, and design standards for coal mining and reclamation operations on prime farmland.

317.200. Responsibilities of Agencies.

317.210. The NRCS within Utah will establish specifications for prime farmland soil removal, storage, replacement, and reconstruction.

317.220. The Division will use the soil-reconstruction specifications of R645-302-317.210 to carry out its responsibilities under R645-302-310 through R645-302-316 and R645-301-800.

317.300. Applicability. The requirements of the R645-302-317 will not apply to prime farmland that has been excluded in accordance with R645-302-311 and R645-302-312.

317.400. Soil Removal and Stockpiling.

317.410. Prime farmland soils will be removed from the areas to be disturbed before drilling, blasting, or mining.

317.420. The minimum depth of soil and soil materials to be removed and stored for use in the reconstruction of prime farmland will be sufficient to meet the requirements of R645-302-317.520.

317.430. Soil removal and stockpiling operations on prime farmland will be conducted to:

317.431. Separately remove the topsoil, or remove other suitable soil materials where such other soil materials will create a final soil having a greater productive capacity than that which exists prior to mining. If not utilized immediately, this material will be placed in stockpiles separate from the spoil and all other excavated materials; and

317.432. Separately remove the B or C horizon or other suitable soil material to provide the thickness of suitable soil required by R645-302-317.520. If not utilized immediately, each horizon or other material will be stockpiled separately from the spoil and all other excavated materials. Where combinations of such soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling is not necessary.

317.440. Stockpiles will be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than 30 days, stockpiles will meet the requirements of R645-301-232, R645-301-233.100, R645-301-234, R645-301-242, and R645-301-243.

317.500. Soil Replacement.

317.510. Soil reconstruction specifications established by the NRCS will be based upon the standards of the National Cooperative Soil Survey and will include, as a minimum, physical and chemical characteristics of reconstructed soils and soil descriptions containing soil-horizon depths, soil densities, soil pH, and other specifications such that reconstructed soils will have the capability of achieving levels of yield equal to, or higher than, those of nonmined prime farmland in the surrounding area.

317.520. The minimum depth of soil and substitute soil material to be reconstructed will be 48 inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. Soil horizons will be considered as inhibiting or preventing root penetration if their physical or chemical properties or water-supplying capacities cause them to restrict or prevent penetration by roots of plants common to the vicinity of the permit area and if these properties or capacities have little or no beneficial effect on soil productive capacity.

317.530. The operator will replace and regrade the soil horizons or other root-zone material with proper compaction and uniform depth.

317.540. The operator will replace the B horizon, C horizon, or other suitable material specified in R645-302-317.432 to the thickness needed to meet the requirements of R645-302-317.520.

317.550. The operator will replace the topsoil or other suitable soil materials specified in R645-302-317.431 as the final surface soil layer. This surface soil layer will equal or exceed the thickness of the original surface soil layer, as determined by the soil survey.

317.600. Revegetation and Restoration of Soil Productivity.

317.610. Following prime farmland soil replacement, the soil surface will be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion.

317.620. Prime farmland soil productivity will be restored in accordance with the following provisions:

317.621. Measurement of soil productivity will be initiated

within 10 years after completion of soil replacement;

317.622. Soil productivity will be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under R645-302-317.626. A statistically valid sampling technique at a 90-percent or greater statistical confidence level will be used as approved by the Division in consultation with the NRCS;

317.623. The measurement period for determining average annual crop production (yield) will be a minimum of three crop years prior to release of the operator's performance bond;

317.624. The level of management applied during the measurement period will be the same as the level of management used on nonmined prime farmland in the surrounding area;

317.625. Restoration of soil productivity will be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices;

317.626. The reference crop on which restoration of soil productivity is proven will be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth will be chosen as one of the reference crops;

317.627. Reference crop yields for a given crop season are to be determined from:

317.627.1. The current yield records of representative local farms in the surrounding area, with concurrence by the NRCS; or

317.627.2. The average county yields recognized by the U.S. Department of Agriculture, which have been adjusted by the NRCS for local yield variation within the county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop; and

317.628. Under either procedure in R645-302-317.627, the average reference crop yield may be adjusted, with the concurrence of the NRCS, for:

317.628.1. Disease, pest, and weather-induced seasonal variations; or

317.628.2. Differences in specific management practices where the overall management practices of the crops being compared are equivalent.

320. Alluvial Valley Floors. R645-302-320 applies to any person who conducts or intends to conduct coal mining and reclamation operations on areas or adjacent to areas designated as alluvial valley floors.

321. Alluvial Valley Floor Determination.

321.100. Before applying for a permit to conduct, or before conducting surface coal mining and reclamation operations within a valley holding a stream or in a location where the adjacent area includes any stream, the applicant shall either affirmatively demonstrate, based on available data, the presence of an alluvial valley floor, or submit to the Division the results of a field investigation of the proposed permit and adjacent area. The field investigations shall include sufficiently detailed geologic, hydrologic, land use, soils, and vegetation studies on areas required to be investigated by the Division, after consultation with the applicant, to enable the Division to make an evaluation regarding the existence of the probable alluvial valley floor in the proposed permit or adjacent area and to determine which areas, if any, require more detailed study in order to allow the Division to make a final determination regarding the existence of an alluvial valley floor.

321.200. Studies performed during the investigation by the applicant or subsequent studies as required of the applicant by the Division shall include an appropriate combination, adapted

to site-specific conditions, of:

321.210. Mapping of unconsolidated stream-laid deposits holding streams including, but not limited to, geologic maps of unconsolidated deposits, and stream-laid deposits, maps of streams, delineation of surface watersheds and directions of shallow groundwater flows through and into the unconsolidated deposits, topography showing local and regional terrace levels, and topography of terraces, flood plains and channels showing surface drainage patterns;

321.220. Mapping of all lands included in the area in accordance with R645-302-321 and subject to agricultural activities, showing the area in which different types of agricultural lands, such as flood irrigated lands, pasture lands and undeveloped rangelands, exist, and accompanied by measurements of vegetation in terms of productivity and type;

321.230. Mapping of all lands that are currently or were historically flood irrigated, showing the location of each diversion structure, ditch, dam and related reservoir, irrigated land, and topography of those lands;

321.240. Documentation that areas identified in R645-302-321 are, or are not, subirrigated, based on groundwater monitoring data, representative water quality, soil moisture measurements, and measurements of rooting depth, soil mottling, and water requirements of vegetation;

321.250. Documentation, based on representative sampling, that areas identified under R645-302-321 are, or are not, flood irrigable, based on streamflow, water quality, water yield, soils measurements, and topographic characteristics; and

321.260. Analysis of a series of aerial photographs, including color infrared imagery flown at a time of year to show any late summer and fall differences between upland and valley floor vegetative growth and of a scale adequate for reconnaissance identification of areas that may be alluvial valley floors.

321.300. Based on the investigations conducted under R645-302-321.200, the Division will make a determination of the extent of any alluvial valley floors within the study area and whether any stream in the study area may be excluded from further consideration as lying within an alluvial valley floor. The Division will determine that an alluvial valley floor exists if it finds that:

321.310. Unconsolidated streamlaid deposits holding streams are present; and,

321.320. There is sufficient water to support agricultural activities as evidenced by:

321.321. The existence of flood irrigation in the area in question or its historical use;

321.322. The capability of an area to be flood irrigated, based on streamflow water yield, soils, water quality, and topography; or,

321.323. Subirrigation of the lands in question, derived from the groundwater system of the valley floor.

322. Application Contents for Operations Affecting Designated Alluvial Valley Floors.

322.100. If land within the permit area or adjacent area is identified as an alluvial valley floor and the proposed coal mining and reclamation operation may affect an alluvial valley floor or waters supplied to an alluvial valley floor, the applicant will submit a complete application for the proposed coal mining and reclamation operation to be used by the Division together with other relevant information, including the information required by R645-302-321, as a basis for approval or denial of the permit.

322.200. The complete application will include detailed surveys and baseline data required by the Division for a determination of:

322.210. The characteristics of the alluvial valley floor which are necessary to preserve the essential hydrologic functions throughout the mining and reclamation process;

322.220. The significance of the area to be affected to agricultural activities;

322.230. Whether the operation will cause, or presents an unacceptable risk of causing, material damage to the quantity or quality of surface or groundwaters that supply the alluvial valley floor;

322.240. The effectiveness of proposed reclamation with respect to requirements of the State Program; and

322.250. Specific environmental monitoring required to measure compliance with R645-302-324 during and after coal mining and reclamation operations.

322.300. Information required under R645-302-322 shall include, but not be limited to:

322.310. Geologic data, including geologic structure, and surficial geologic maps, and geologic cross-sections;

322.320. Soils and vegetation data, including a detailed soil survey and chemical and physical analysis of soils, a vegetation map and narrative descriptions of quantitative and qualitative surveys, and land use data, including an evaluation of crop yields;

322.330. Surveys and data required under R645-302-322 for areas designated as alluvial valley floors because of their flood irrigation characteristics will also include, at a minimum, surface hydrologic data, including streamflow, runoff, sediment yield, and water quality analysis describing seasonal variations over at least one full year, field geomorphic surveys and other geomorphic studies;

322.340. Surveys and data required under R645-302-322 for areas designated as alluvial valley floors because of their subirrigation characteristics, will also include, at a minimum, geohydrologic data including observation well establishment for purposes of water level measurements, groundwater contour maps, testing to determine aquifer characteristics that affect waters supplying the alluvial valley floors, well and spring inventories, and water quality analysis describing seasonal variations over at least one full year, and physical and chemical analysis of overburden to determine the effect of the proposed coal mining and reclamation operations on water quality and quantity;

322.350. Plans showing how the operations will avoid, during mining and reclamation, interruption, discontinuance or preclusion of farming on the alluvial valley floors unless the premining land use has been undeveloped rangeland which is not significant to farming and will not materially damage the quantity or quality of water in surface and groundwater systems that supply alluvial valley floors;

322.360. Maps showing farms that could be affected by the mining and, if any farm includes an alluvial valley floor, statements of the type and quantity of agricultural activity performed on the alluvial valley floor and its relationship to the farm's total agricultural activity including an economic analysis; and

322.370. Such other data as the Division may require.

322.400. The surveys required by R645-302-322 should identify those geologic, hydrologic, and biologic characteristics of the alluvial valley floor necessary to support the essential hydrologic functions of an alluvial valley floor. Characteristics which support the essential hydrologic functions and which must be evaluated in a complete application include, but are not limited to:

322.410. Characteristics supporting the function of collecting water which include, but are not limited to;

322.411. The amount and rate of runoff and water balance analysis, with respect to rainfall, evapotranspiration, infiltration and groundwater recharge;

322.412. The relief, slope, and density of the network of drainage channels;

322.413. The infiltration, permeability, porosity and transmissivity of unconsolidated deposits of the valley floor that

either constitute the aquifer associated with the stream or lie between the aquifer and the stream; and

322.414. Other factors that affect the interchange of water between surface streams and groundwater systems, including the depth to groundwater, the direction of groundwater flow, the extent to which the stream and associated alluvial groundwater aquifers provide recharge to, or are recharged by bedrock aquifers;

322.420. Characteristics supporting the function of storing water which include, but are not limited to:

322.421. Roughness, slope, and vegetation of the channel, flood plain, and low terraces that retard the flow of surface waters;

322.422. Porosity, permeability, waterholding capacity, saturated thickness and volume of aquifers associated with streams, including alluvial aquifers, perched aquifers, and other water bearing zones found beneath valley floors; and

322.423. Moisture held in soils or the plant growth medium within the alluvial valley floor, and the physical and chemical properties of the subsoil that provide for sustained vegetation growth or cover during extended periods of low precipitation;

322.430. Characteristics supporting the function of regulating the flow of water which include, but are not limited to:

322.431. The geometry and physical character of the valley, expressed in terms of the longitudinal profile and slope of the valley and the channel, the sinuosity of the channel, the cross-section, slopes and proportions of the channels, flood plains and low terraces, the nature and stability of the stream banks and the vegetation established in the channels and along the stream banks and flood plains;

322.432. The nature of surface flows as shown by the frequency and duration of flows of representative magnitude including low flows and floods; and

322.433. The nature of interchange of water between streams, their associated alluvial aquifers and any bedrock aquifers as shown by the rate and amount of water supplied by the stream to associated alluvial and bedrock aquifers (i.e. recharge) and by the rates and amounts of water supplied by aquifers to the stream (i.e., baseflow); and

322.500. Characteristics which make water available and which include, but are not limited to the presence of land forms including flood plains and terraces suitable for agricultural activities.

323. Findings

323.100. No permit or permit change application for coal mining and reclamation operations in Utah will be approved by the Division unless the application demonstrates and the Division finds in writing, on the basis of information set forth in the application that:

323.110. The proposed operations would not interrupt, discontinue, or preclude farming on an alluvial valley floor unless the premining land use has been undeveloped rangeland which is not significant to farming on the alluvial valley floor, or unless the area of an affected alluvial valley floor is small and provides, or may provide, negligible support for production of one or more farms; provided however, R645-302-323.100 does not apply to those lands which were identified in a reclamation plan approved by the State Program prior to August 3, 1977, for any coal mining and reclamation operation that, in the year preceding August 3, 1977;

323.111. Produced coal in commercial quantities and was located within or adjacent to alluvial valley floors, or

323.112. Obtained specific permit approval by the Division to conduct coal mining and reclamation operations within an alluvial valley floor;

323.120. The proposed operations would not materially damage the quantity and quality of water in surface and

underground water systems that supply those alluvial valley floors or portions of alluvial valley floors which are:

323.121. Included in R645-302-323.110; or

323.122. Outside the permit area of an existing or proposed coal mining and reclamation operation;

323.130. The proposed operations would be conducted in accordance with all applicable requirements of the State Program; and

323.140. Any change in the land use of the lands covered by the proposed permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.

323.200. The significance of the impact of the proposed operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the Division as suitable for site-specific protection of agricultural activities in alluvial valley floors. The effect of the proposed operations on farming will be concluded to be significant if they would remove from production, over the life of the mine, a proportion of the farm's production that would decrease the expected annual income from agricultural activities normally conducted at the farm.

323.300. Criteria for determining whether a coal mining and reclamation operation will materially damage the quantity or quality of waters subject to R645-302-323.310 and R645-302-323.320 include, but are not limited to:

323.310. Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor, as measured by specific conductance in millimhos, to levels above the threshold value at which crop yields decrease, as specified in Maas and Hoffman, "Crop Salt Tolerance - Current Assessment," Table 1, "Salt Tolerance of Agricultural Crops," which is incorporated by reference unless the applicant demonstrates compliance with R645-302-323.320.

323.311. Salt tolerances for agricultural crops have been published by E.V. Maas and G.J. Hoffman, in a paper titled "Crop Salt Tolerance - Current Assessment" contained in The Journal of The Irrigation and Drainage Division, American Society of Civil Engineers, pages 115 through 134, June, 1977. Table 1, giving threshold salinity values is presented on pages 22 through 125.

323.312. The Maas and Hoffman publication is on file and available for inspection and copying at the Division office;

323.320. Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor in excess of those incorporated by reference in R645-302-323.310 will not be allowed unless the applicant demonstrates, through testing related to the production of crops grown in the locality, that the proposed operations will not cause increases that will result in crop yield decreases;

323.321. For types of vegetation not listed in Maas and Hoffman as specified by the Division, based upon consideration of observed correlation between total dissolved solid concentrations in water and crop yield declines, taking into account the accuracy of the correlations;

323.322. Potential increases in the average depth to water saturated zones (during the growing season) located within the root zone of the alluvial valley floor that would reduce the amount of subirrigation land compared to premining conditions;

323.323. Potential decreases in surface flows that would reduce the amount of irrigable land compared to premining conditions; and

323.324. Potential changes in the surface or groundwater systems that reduce the area available to agriculture as a result of flooding or increased saturation of the root zone.

323.400. For the purposes of R645-302-323, a farm is one or more land units on which agricultural activities are

conducted. A farm is generally considered to be the combination of land units with acreage and boundaries in existence prior to August 3, 1977, or, if established after August 3, 1977, with those boundaries based on enhancement of the farm's agricultural productivity and not related to coal mining and reclamation operations.

324. Performance Standards.

324.100. Essential Hydrologic Functions.

324.110. The operator of a coal mining and reclamation operation will minimize disturbances to the hydrologic balance by preserving throughout the mining and reclamation process the essential hydrologic functions of an alluvial valley floor not within the permit area.

324.120. The operator of a coal mining and reclamation operation will minimize disturbances to the hydrologic balance within the permit area by reestablishing throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors.

324.200. Protection of Agricultural Activities.

324.210. Prohibitions. Coal mining and reclamation operations will not:

324.211. Interrupt, discontinue or preclude farming on alluvial valley floors; or

324.212. Cause material damage to the quantity or quality of water in surface or underground water systems that supply alluvial valley floors.

324.220. Statutory Exclusions. The prohibitions of R645-302-324.210 will not apply:

324.221. Where the premining land use of an alluvial valley floor is undeveloped rangeland which is not significant to farming;

324.222. Where farming on the alluvial valley floor that would be affected by the coal mining and reclamation operation is of such small acreage as to be of negligible impact on the farm's agricultural production;

324.223. To any coal mining and reclamation operation that, in the year preceding August 3, 1977:

324.223.1. Produced coal in commercial quantities and was located within or adjacent to a alluvial valley floor; or

324.223.2. Obtained specific permit approval by the Division to conduct coal mining and reclamation operations within an alluvial valley floor; or

324.224. To any land that is the subject of an application for renewal or revision of a permit issued pursuant to the Act which is an extension of the original permit, insofar as:

324.224.1. The land was previously identified in a reclamation plan submitted under R645-301, and

324.224.2. The original permit area was excluded from the protection of R645-302-324.210 for a reason set forth in R645-302-324.223.

324.300. Monitoring.

324.310. A monitoring system will be installed, maintained, and operated by the permittee on all alluvial valley floors during coal mining and reclamation operations and continued until all bonds are released in accordance with R645-301-800. The monitoring system will provide sufficient information to allow the Division to determine that:

324.311. The essential hydrologic functions of alluvial valley floors are being preserved outside the permit area or reestablished within the permit area throughout the mining and reclamation process in accordance with R645-302-324.100;

324.312. Farming on lands protected under R645-302-324.200 is not being interrupted, discontinued, or precluded; and

324.313. The operation is not causing material damage to the quantity or quality of water in the surface or underground systems that supply alluvial valley floors protected under R645-302-324.200.

324.320. Monitoring will be conducted at adequate

frequencies to indicate long-term trends that could affect compliance with R645-302-324.100 and R645-302-324.200.

324.330. All monitoring data collected and analyses thereof will routinely be made available to the Division.

KEY: reclamation, coal mines

May 23, 2012

Notice of Continuation September 6, 2016

40-10-1 et seq.

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-303. Coal Mine Permitting: Change, Renewal, and Transfer, Assignment, or Sale of Permit Rights.
R645-303-100. General Information on the Change, Renewal, Assignment or Sale of Permit Rights.

110. Objectives. The objectives of R645-303 are to:

111. Provide procedures for the Division to review, change, and renew permits under the regulatory program; and
 112. Provide procedures for transfer, sale, or assignment of rights granted in permits under the State Program.

120. Responsibilities of the Division. The Division will:

121. Ensure that permits are revised prior to changes in coal mining and reclamation operations;

122. Ensure that all permits are regularly reviewed to determine that coal mining and reclamation operations under these permits are conducted in compliance with the State Program;

123. Effectively review and act on applications to renew existing permits in a timely manner, to ensure that coal mining and reclamation operations continue, if they comply with the State Program; and

124. Ensure that no person conducts coal mining and reclamation operations, through the transfer, sale, or assignment of rights granted under permits, without the prior approval of the Division.

R645-303-200. Permit Review, Change and Renewal.

210. Division Review of Permits.

211. The Division will review each permit issued and outstanding under the State Program during the term of the permit. This review will occur not later than the middle of each permit term and as follows:

211.100. Permits with a term longer than five years will be reviewed no less frequently than the permit midterm or every five years, whichever is more frequent;

211.200. Permits with variances granted in accordance with R645-302-220 and R645-302-280 will be reviewed no later than three years from the date of issuance of the permit unless, for variances issued in accordance with R645-302-220, the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the permit; and

211.300. Permits containing experimental practices issued in accordance with R645-302-210 and permits with a variance from approximate original contour requirements in accordance with R645-302-270 will be reviewed as set forth in the permit or at least every two and one-half years from the date of issuance as required by the Division in accordance with R645-302-217 and R645-302-273, respectively.

212. After the review required by R645-303-211, or at any time, the Division may, by order, require reasonable permit change in accordance with R645-303-220 to ensure compliance with the State Program.

213. Any order of the Division requiring permit change will be based upon written findings and will be subject to the provisions for administrative and judicial review under R645-300-200. Copies of the order will be sent to the permittee.

214. Permits may be suspended or revoked in accordance with R645-400.

220. Permit Changes.

221. At any time during the term of a permit, the permittee may submit to the Division, pursuant to R645-303-220, an Application for Permit Change. The Division will review and respond to an initial Application for a Permit Change within 15 days of receipt of the application.

222. The operator will obtain approval of a permit change by making application in accordance with R645-303-220 for changes in the method of conduct of mining or reclamation operations or in the conditions authorized or required under the

approved permit; provided, however, that any extensions to the approved permit area, except for Incidental Boundary Changes, must be processed and approved using the procedural requirements of R645-303-226.

223. The Application for Permit Change will identify the proposed change, or changes, and include the information required under, R645-301, and R645-302 to the extent applicable to the proposed change or changes. The Application for Permit Change will be categorized as a Significant Permit Revision if it involves any of the changes or circumstances set forth in R645-303-224. All other Applications for Permit Change, including Incidental Boundary Changes, will be categorized as Permit Amendments.

224. An Application for Permit Change must be categorized and processed as a Significant Permit Revision for any of the following changes or circumstances:

224.100. An increase in the size of the surface or subsurface disturbed area in an amount of 15 percent, or greater, than the disturbed area under the approved permit;

224.200. Engaging in operations outside of the cumulative impact area as defined in the Cumulative Hydrologic Impact Assessment (CHIA);

224.300. Engaging in operations in hydrologic basins other than those authorized in the approved permit;

224.400. In order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, performance bond, or other equivalent guarantee upon which the original permit was issued; or

224.500. As otherwise required under applicable law or regulation.

225. Applications for Significant Permit revisions and Permit Amendments will be submitted to the Division at least 120 days and 60 days, respectively, before the change in operations is expected to be implemented.

226. Significant Permit Revisions as provided in R645-303-224 will be reviewed and processed by the Division in accordance with the requirements of R645-300-100 and R645-300-200, and the information requirements of R645-301 and R645-302, including requirements for notice, public participation, and notice of decision.

227. Permit Amendments will be processed in accordance with the requirements of R645-300-100 and R645-300-200, and the information requirements of R645-301 and R645-302, except that permit amendments will not be subject to requirements for notice, public participation, or notice of decision of R645-300-100.

228. The Division will approve or disapprove the Application for Significant Permit Revisions and Permit Amendments, within 120 days and 60 days, respectively, of receipt by the Division of the Administratively Complete Application for Permit Change. The Director may extend the designated time period if it is determined that due to weather conditions, or other considerations, it is physically impossible to perform the review of the Application for Permit Change within that time period.

230. Permit Renewals.

231. General. A valid permit, issued pursuant to the State Program, will carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

232. Application Requirements and Procedures.

232.100. An application for renewal of a permit will be filed with the Division at least 120 days before expiration of the existing permit term.

232.200. An application for renewal of a permit will be in the form required by the Division and will include at a minimum:

232.220. Evidence that a liability insurance policy or

adequate self-insurance under R645-301-800 will be provided by the applicant for the proposed period of renewal;

232.230. Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the Division pursuant to R645-301-800;

232.240. A copy of the proposed newspaper notice and proof of publication of same, as required by R645-300-121.100; and

232.250. Additional, revised, or updated information required by the Division.

232.300. Applications for renewal will be subject to the requirements of public notification and public participation contained in R645-300-120 and R645-300-152.

232.400. If an application for renewal includes any proposed revisions to the permit, such revisions will be identified and subject to the requirements of R645-303-220.

232.500. Irrespective of any other R645 rule requirements for permitting coal mining and reclamation operations, a permittee may renew a permit for the purpose of reclamation only if solely reclamation activities remain to be done and no coal will be extracted, processed, or handled. Obligations established under a permit will continue regardless of whether the authorization to extract, process, or handle coal has expired or has been terminated, revoked, or suspended.

233. Approval Process.

233.100. Criteria for approval. The Division will approve a complete and accurate application for permit renewal, unless it finds, in writing that:

233.110. The terms and conditions of the existing permit are not being satisfactorily met;

233.120. The present coal mining and reclamation operations are not in compliance with the environmental protection standards of the State Program;

233.130. The requested renewal substantially jeopardizes the operator's continuing ability to comply with the State Program on existing permit areas;

233.140. The operator has not provided evidence of having liability insurance or self-insurance as required in R645-301-890;

233.150. The operator has not provided evidence that any performance bond required to be in effect for the operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond the Division might require pursuant to R645-301-800; or

233.160. Additional, revised, or updated information required by the Division under R645-303-232.250 has not been provided by the applicant.

233.200. Burden of Proof. In the determination of whether to approve or deny a renewal of a permit, the burden of proof will be on the opponents of renewal.

233.300. Alluvial Valley Floor Variance. If the coal mining and reclamation operation authorized by the original permit was not subject to the standards contained in sections 40-10-11(2)(e)(i) and (ii) of the Act and R645-302-320, because the permittee complied with the exceptions in the proviso to section 40-10-11(2)(e)(ii) of the Act, the portion of the application for renewal of the permit that addresses new land areas previously identified in the reclamation plan for the original permit will not be subject to the standards contained in sections 40-10-11(2)(e)(i) and (ii) of the Act and R645-302-320.

234. Renewal Term. Any permit renewal will be for a term not to exceed the period of the original permit established under R645-300-150.

235. Notice of Decision. The Division will send copies of its decision to the applicant, to each person who filed comments or objections on the renewal, to each party to any informal conference held on the permit renewal, and to the Office.

236. Administrative and Judicial Review. Any person

having an interest which is or may be adversely affected by the decision of the Division will have the right to administrative and judicial review set forth in R645-300-200.

R645-303-300. Transfer, Assignment, or Sale of Permit Rights.

310. General Information. No transfer, assignment, or sale of rights granted by a permit will be made without the prior written approval of the Division. At its discretion, the Division may allow a prospective successor in interest to engage in coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under R645-303-320, provided that the prospective successor in interest can demonstrate to the satisfaction of the Division that sufficient bond coverage will remain in place.

320. Application Requirements. An applicant for approval of the transfer, assignment, or sale of permit rights will:

321. Provide the Division with an application for approval of the proposed transfer, assignment, or sale including:

321.100. The name and address of the existing permittee and permit number or other identifier;

321.200. A brief description of the proposed action requiring approval; and

321.300. The legal, financial, compliance, and related information required by R645-301-100 for the applicant for approval of the transfer, assignment, or sale of permit rights;

322. Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent; and

323. Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under R645-301-800.

330. Public Participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the Division, within 30 days of the advertisement publication described under R645-303-322.

340. Criteria for Approval. The Division may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor:

341. Is eligible to receive a permit in accordance with R645-300-132 and R645-300-133;

342. Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by R645-301-800; and

343. Meets any other requirements specified by the Division.

350. Notification.

351. The Division will notify the permittee, the successor, commentators, and the Office of its findings.

352. The successor will immediately provide notice to the Division of the consummation of the transfer, assignment, or sale of permit rights.

360. Continued Operation Under Existing Permit. The successor in interest will assume the liability and reclamation responsibilities of the existing permit and will conduct the coal mining and reclamation operations in full compliance with the State Program and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in the R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303.

KEY: reclamation, coal mines

May 23, 2012

Notice of Continuation September 6, 2016

40-10-1 et seq.

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-402. Inspection and Enforcement: Individual Civil Penalties.****R645-402-100. Information on Individual Civil Penalties.**

110. The rules in R645-402 provide guidance to exercise the authority set forth in UCA 40-10-20(6).

120. Individual civil penalties will be assessed by a Division-appointed assessment officer using the process described in R645-402.

R645-402-200. When an Individual Civil Penalty May Be Assessed.

210. Except as provided in R645-402-220, the assessment officer may assess an individual civil penalty against any corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure, or refusal.

220. The assessment officer will not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Division to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

R645-402-300. Amount of the Individual Civil Penalty.

310. In determining the amount of an individual civil penalty assessed under R645-402-200, the assessment officer will consider the criteria specified in UCA 40-10-20, including

311. The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular coal mining and reclamation operations;

312. The seriousness of the violation failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

313. The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure, or refusal.

320. The individual civil penalty will not exceed \$5,000 for each violation. Each day of continuing violation may be deemed a separate violation and the assessment officer may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order, or other order incorporated in a final decision issued by the board, until abatement or compliance is achieved.

R645-402-400. Procedure for Assessment of Individual Civil Penalty.

410. Notice. The assessment officer will serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

420. Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the Division 30 days after service upon the individual unless:

421. The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the board; or

422. The Division and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

430. Service. Service of notice under R645-402-400 will satisfy the standard of the R641 Rules of the board.

R645-402-500. Payment of Penalty.

510. No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty will be due upon issuance of the final order.

520. Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with the R641 Rules of the board, the penalty will be due upon issuance of a final board order affirming, increasing, or decreasing the proposed penalty.

530. Abatement agreement. Where the board and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Board stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

540. Delinquent payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty will be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the Federal Register. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties will result in referral to the Utah Attorney General for appropriate collection action.

KEY: reclamation, coal mines**April 1, 1995****Notice of Continuation September 6, 2016****40-10-1 et seq.**

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-403. Alternative Enforcement.
R645-403-100. Provisions for Criminal Penalties and Civil Actions.

KEY: reclamation, coal mines, enforcement
May 23, 2012
Notice of Continuation September 6, 2016

40-10-20
40-10-22
40-10-23

110. The rules in R645-403 provide guidance to exercise the authority set forth in UCA 40-10-20(4) through 40-10-20(7), 40-10-22(2), and 40-10-23.

111. Whenever a court of competent jurisdiction enters a judgment against or convicts a person under these provisions, the Division must update AVS to reflect the judgment or conviction.

112. The existence of a performance bond or bond forfeiture cannot be used as the sole basis for determining that an alternative enforcement action is unwarranted.

113. Nothing in R645-403 eliminates or limits any additional enforcement rights or procedures available under federal or state law.

120. Under UCA 40-10-20(5) and 40-10-20(7), the Division may request the Utah Attorney General to pursue criminal penalties against any person who:

120.100. Willfully and knowingly violates a condition of the permit;

120.200. Willfully and knowingly fails or refuses to comply with any notice, order or judicial review under R645-400-300, except as described in UCA 40-10-20(5); or

120.300. Knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the regulatory program or any order or decision issued by the Division or Board under UCA 40-10-20 through 40-10-22.

121. Criminal proceedings instigated under the authority of R645-403-120 must commence within five years of the date of the alleged violation.

130. Under UCA 40-10-20(4) and 40-10-22(2)(a), the Division may request the Utah Attorney General to pursue civil action against a permittee, or permittee's agent, who:

130.100. Violates or fails or refuses to comply with any order or decision issued by the Division or the Board;

130.200. Interferes with, hinders, or delays the Division or its authorized representatives in carrying out the provisions of the Act or its implementing rules;

130.300. Refuses to admit the Division's authorized representatives onto the site of a coal mining and reclamation operation;

130.400. Refuses to allow the Division's authorized representatives to inspect a coal mining and reclamation operation;

130.500. Refuses to furnish any information or report that the Division requests in furtherance of the provisions of the Act or the regulatory program; or

130.600. Refuses to allow access to, or copying of, those records that the Division determines necessary to carry out the provisions of the Act and its implementing rules.

131. A civil action for relief includes a permanent or temporary injunction, restraining order, or any other appropriate order by a state district court for the district in which the coal mining and reclamation operation is located or in which the permittee of the operation has their principal office.

132. Temporary restraining orders will be issued in accordance with Rule 65A of the Utah Rules of Civil Procedure, as amended.

133. Any relief the court grants to enforce an order under R645-403-131 will continue in effect until completion or final termination of all proceedings for review of that order under the Act or its implementing rules unless, beforehand, the Utah Supreme Court or district court granting the relief on review grants a stay of enforcement or sets aside or modifies the order.

R661. Navajo Trust Fund, Trustees.**R661-13. Veterans' Housing Program Policy.****R661-13-1. Veterans' Housing Program Policy.**

(1) Definitions

(a) "Veteran" is defined as a person who served in the active military, naval, coast guard, or air services, and who was discharged or released there from under conditions other than dishonorable, and who served (90) days or more during war time and 181 days or more during peace time. The definition of a Veteran as used herein includes Widows and Gold Star Mothers.

(b) A "widow" is defined as a surviving spouse who was validly married to and lived with the veteran continuously from the date of marriage to the date of the veteran's death and has not remarried. The term "widow" used in this guideline includes widowers.

(i) A "Gold Star Mother" is defined as a mother whose child was killed in the line of duty (killed in action) or has been declared missing in action.

(2) Program for eligible veterans requesting new house construction assistance.

(a) Applicants shall work directly with their respective Community Veterans Organization first then to the Chapter through which they are seeking housing assistance.

(i) All requests, budget preparation, updates and progress reports, will be processed through the Chapter.

(ii) Veterans' Housing projects will follow the regular Chapter project procedures for housing projects.

(b) The Applicant's Chapter shall identify match-funding sources in order to maximize the number of applicants that can be assisted with this program.

(i) UNTF will maintain a Veteran's Housing set aside with a limit of \$45,000 per applicant.

(ii) A Chapter may use their own chapter crew, contractor, or request the UNTF crew to build these houses for veterans.

(3) Types of Assistance

(a) New construction projects, assistance includes funding for building materials and/or labor.

(b) Individuals eligible to apply for assistance:

(i) veteran; and

(ii) recipient of the most priority points.

(4) Eligibility and Selection Criteria

(a) Applicants for UNTF housing assistance must first submit application to their Utah Chapter.

(b) A UNTF Veterans Housing Program application must be filled out and submitted to the Utah Chapter where the applicant resides, including homesite lease, allotment deed, leasehold interest, and/or other legal landownership documentation, and house size and floor plan that is acceptable to the Chapter.

(c) Applicant must be a Veteran as defined herein. Applicant must verify that he/she is a veteran by proof of separation papers (DD-214).

(d) Applicant must be a San Juan County, Utah resident as required by Rule R661-3.

(5) There must be proof that applicant's housing condition is substandard, dilapidated or is inadequate in terms of the capacity to meet the basic living standards of the veteran household.

(a) Proof that applicant is homeless or is living in borrowed housing or with relatives;

(b) The Utah Chapter where the applicant resides shall make the initial determination of eligibility for UNTF assistance

(6) The Chapter shall take into consideration:

(a) income;

(b) family size;

(c) age;

(d) health

(e) housing condition;

(f) Chapter priority listing; and,

(g) ineligibility for other housing programs.

(7) The Chapter shall also use the following priority rating system in reviewing Veteran applications:

(a) Handicapped and Disabled (up to 25 points) applicants, Disabilities sustained from Military Service (up to 25 points), Nonservice-connected disabilities (up to 10 points)

(b) Elderly applicants (up to 25 points), 65 years of age or older (25 points), 59 – 64 years old (10 points).

(c) Family size and Overcrowded conditions (up to 25 points: 5 points for veteran, 5 points for every family member, but no more than 25 points).

(i) If the Veteran is living with relatives, only the immediate family members shall be eligible for points consideration.

(ii) Immediate family members are the applicant, the applicant's spouse, the applicant's biological son(s) and/or daughter(s), and any legally-adopted children that are living with the applicant on a full-time basis at the time of application.

(d) Housing/Dwelling Conditions (up to 25 points), If the existing house belongs to the veteran, the house condition shall be evaluated, taking into consideration the interior, exterior, roof, insulation, windows, doors, type of structure, year built (age of house).

(i) Good condition 0 points

(ii) Fair condition 5 points

(iii) Poor condition 15 points

(iv) Very Poor condition 25 points

(iv) Homeless 25 points

(6) Veteran Housing Projects shall be completed with 24 months of approval by the UNTF board.

**KEY: veterans, veterans' housing
September 21, 2016**

51-10-205(4)(a)

R661. Navajo Trust Fund, Trustees.**R661-14. Heavy Equipment Purchase and Repair Program.****R661-14-1. Heavy Equipment Purchase and Repair Program.**

(1) Funding for purchase or repair of Heavy Equipment

(a) Heavy Equipment is equipment such as Graders, Backhoes, or Bobcat or Skidsteer, Fork Lift, One-ton flatbed truck, and attachments.

(b) Funds for this program will be allocated from Heavy Equipment allocation and/or Chapter Projects allocation funds for this program.

(i) UNTF will match up to 75% of the Heavy Equipment purchase with a cap of \$75,000 for any single item (\$50,000.00 piece of heavy equipment x 75% = \$37,500.00 UNTF Funding).

(ii) If a Chapter House is not located in Utah, a prorated amount will be applied in addition to the 75% based on the Chapter population in Utah compared to the Chapter population in the Arizona. The Dennehotso and Teecnospos Chapter Houses are located in Arizona, therefore the cap for purchases for those Chapter Houses are as follows:

(A) Dennehotso Chapter is 10% (for example, if heavy equipment cost \$20,000, the formula will be $\$20,000 \times 75\% \times 10\% = \$1,500.00$.)

(B) Teecnospos Chapter is 30% (for example, equipment cost of $\$20,000 \times 75\% \times 30\% = \$4,500.00$.)

(c) Minor Repairs and Maintenance for Heavy Equipment are the responsibility of the Chapter.

(2) Procedures

(a) UNTF is required to make heavy equipment purchased using the State of Utah Purchasing Department annual purchasing contracts.

(i) Chapters shall contact the UNTF staff to obtain the information regarding types of office equipment that is available under the state contract.

(ii) If equipment is purchased under the state contract, two price quotes are not required.

(b) If the equipment is not under state contract, the Chapter shall obtain cost quotations from at least two vendors or equipment repair service providers to get the best price; the quotes shall be attached to the proposal.

(c) The Chapter shall obtain a signed Chapter resolution supporting the proposal.

(d) The Chapter shall use the UNTF "Equipment Purchase/Repair Proposal" form and attendant checklist to submit the request for funding.

(e) The proposal and resolution shall be submitted to the UNTF Administration for consideration by the Dine' Advisory Committee and the Board of Trustees.

(f) If approved by the Board of Trustees, the Chapter will submit a UNTF Payment Request form to complete the purchase.

(3) The Chapter shall ensure that Heavy Equipment should only be operated by properly trained experienced operators.

(4) Heavy equipment purchased using UNTF funds shall not be sold without approval from UNTF.

**KEY: heavy equipment purchases, repair program
September 21, 2016 51-10-205(4)(a)**

R661. Navajo Trust Fund, Trustees.**R661-15. Indemnification.****R661-15-1. Indemnification.**

All recipients of Utah Navajo Trust Fund (UNTF) funds agree to indemnify, save harmless, and release UNTF and the State of Utah, and all their officers, agents, volunteers and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the use of UNTF funds by Recipient(s), their agents, heirs or assigns.

KEY: indemnification**September 21, 2016****51-10-205(4)(a)**

R661. Navajo Trust Fund, Trustees.**R661-16. Health Care Systems Improvement Program.****R661-16-1. Health Care Systems Improvement Program.**

(1) The purpose of this program is to improve health care systems in Utah Navajo communities. This program is primarily intended for physical facility improvements and long-term equipment needs.

(a) Proposals submitted to UNTF under this program shall be for improvements or equipment and must be limited to buildings and/or land located in San Juan County, Utah.

(b) Financial assistance may be in the form of grants or loans.

(c) The amount of financial assistance for health care systems improvements from the Trust Fund may be limited to the amount budgeted and approved by the Dine' Advisory Committee and the UNTF Board of Trustees.

(d) Matching sources of funding are encouraged.

(2) Procedures

(a) The requesting organization shall complete a proposal and coordinate with the local Chapter(s) for support of the proposed project. Since health care facilities usually serve a large geographical area and several communities, it is strongly recommended to have surrounding Chapters provide resolutions of support.

(b) Proposal contents:

(i) Name and contact information of organization:

(A) including the organizational structure of proposing entity;

(B) members of the governing board;

(C) organizational budget and a copy of the most recent annual audited financial report; and

(D) staffing information.

(ii) Description of existing Health Care system:

(A) name of the facility;

(B) project location (include map for illustration);

(C) current condition of the facility; and,

(D) size and dimensions, and range and capacity of health services.

(iii) Description of proposed new construction or improvements to be made:

(A) designated Project Manager.

(B) proposed size;

(C) capacity;

(D) conceptual floorplan; and,

(E) type of facility (Hospital, Clinic, Nursing Home, Dialysis Center, Adult Care, Assisted Living, Hospice, Mobile Clinic, etc).

(iv) Description of how the proposed new construction or improvement(s) will result in the improvement of the health system (additional services, revenue generation, staff expansion, new technology, etc.)

(v) Support letters or agreements and Chapter resolutions, and other supporting documents for the proposed project.

(vi) The proposal will be reviewed by the Dine' Advisory Committee, if approved by the Dine' Advisory Committee, it will then be presented to the Board of Trustees for approval. UNTF has the discretion to request additional information from the applicant

(3) Additional Requirements

(a) If the proposal requires a loan, the entity must comply with the terms and conditions of the loan agreement and the scheduled repayments of the loan.

(i) The entity shall not list UNTF as a co-signer nor as a guarantor.

(ii) UNTF will require a security interest in any projects financed by UNTF loans.

(b) UNTF will periodically review the progress of the project development and submitted financial reports.

(i) UNTF may deny any requesting organization's future

funding allocations in cases of non-compliance or non-conformance to UNTF policies, procedures, or contractual commitments made to obtain UNTF funding.

(ii) UNTF may deny or cease payments for a project based upon non-compliance with the terms of the UNTF grant or loan by the borrower or grantee.

(c) Organizations that receive funding through this program are required to provide annual reports to UNTF, detailing how UNTF funds and other matching funds were used.

**KEY: Navajo health systems
September 21, 2016**

51-10-205(4)(a)

R661. Navajo Trust Fund, Trustees.**R661-17. Office Equipment Purchase Program.****R661-17-1. Office Equipment Purchase Program.**

(1) The purpose of this program to provide Chapters with funds to purchase office equipment or software.

(a) The funds for this program are not allocated to individual Chapters; the funds are provided for in the annual budget and can be disbursed to a Chapter if requested and approved by the DAC and the Board.

(b) This Program is intended for the purchase of new office equipment, generally in an amount exceeding \$300.00.

(c) "Office equipment" is equipment used in an office setting, such as computers, fax machines, photocopiers, printers, typewriters, and furniture.

(d) Software funding is limited to one-time purchase of computer software or software upgrades.

(e) Ineligible Purchases:

(i) Ink cartridges, toners, ribbons, paper, staples, or maintenance programs.

(ii) Portable office equipment such as laptop computers, iPads, cell phones, calculators, and other equipment that can be easily stolen, borrowed and not returned, misplaced, or otherwise lost.

(2) Amount of Funding available

(A) UNTF will match up to 75% of the Office Equipment purchase with a cap of \$10,000 for any single item (\$2,000.00 piece of office equipment x 75% = \$1,500.00 UNTF Funding). Higher price proposals may be entertained under a Chapter Project request.

(B) If a Chapter House is not located in Utah, a prorated amount will be applied in addition to the 75% based on the Chapter population in Utah compared to the Chapter population in the Arizona. The Dennehotso and Tecnospos Chapter Houses are located in Arizona, therefore the cap for purchases for those Chapter Houses are as follows:

(i) Dennehotso 10% (for example, if a new piece of office equipment cost \$2,000, the formula will be $\$2,000 \times 75\% \times 10\% = \$150.00.$)

(ii) Tecnospos 30% (for example, equipment cost of $\$2,000 \times 75\% \times 30\% = \$450.00.$)

(3) Procedures

(A) UNTF is required to make office equipment purchases using the Division of Purchasing and when applicable, the Department of Technology Services purchasing contract.

(i) Chapters shall contact the UNTF staff to obtain the information regarding types of office equipment available under state contract.

(ii) If equipment is purchased under a state contract two price quotes are not required.

(B) Chapters shall use the UNTF "Equipment Purchase Proposal" form and attendant checklist to submit the request for funding.

(i) Applicants shall obtain a signed Chapter resolution supporting the proposal.

(ii) Chapters shall submit the form and the Chapter resolution to UNTF staff for consideration by the Dine' Advisory Committee and the Board of Trustees.

(iii) If approved by the Board, the Chapter then submits a UNTF Payment Request form to the UNTF staff to complete the purchase.

(iv) Purchased office equipment will be shipped to the UNTF office in Blanding. The Chapter must arrange to pick up the equipment.

(4) Office equipment purchased with UNTF funds shall not be sold without prior UNTF approval.

**KEY: office equipment, office equipment purchase program
September 21, 2016 51-10-205(4)(a)**

R661. Navajo Trust Fund, Trustees.**R661-18. Outstanding Senior Award Program.****R661-18-1. Outstanding Senior Award Program.**

(1) The Outstanding Senior Award Program (OSAP) is established to identify and acknowledge excellence exhibited by eligible Navajo high school seniors.

(a) Eligibility

(i) Applicants must have a GPA of 2.5 or higher.

(ii) Applicants can attend school outside of San Juan County and/or Utah, however, an applicant's parents must be eligible for UNTF funding.

(b) Maximum Award is \$600.00

(i) \$100.00 will be awarded at graduation with a Certificate of Recognition.

(ii) The remaining \$500.00 will be sent to the student after he/she has registered and has verified enrollment in a post-secondary school.

(2) Each Utah Chapter, including the Blue Mountain Dine' Community, may recommend students to UNTF for consideration for receipt of the award by the Selection Committee. The applicant, or a Chapter, may also contact the student's high school or UNTF Staff to make recommendations of award recipients to the Selection Committee.

(a) Selection Process

(i) The Selection Committee is be comprised of at least one of the Dine' Advisory Committee Education Sub-Committee members, a local high school administration official, and UNTF staff.

(ii) The Selection Committee shall review applications and shall select students from each Chapter and the Blue Mountain Dine community as follows:

(A) Aneth (2)

(B) Dennehotso (1)

(C) Mexican Water (1)

(D) Navajo Mountain (1)

(E) Oljato (2)

(F) Red Mesa (1)

(G) Teec Nos Pos (1)

(H) Blue Mt Dine Community

The distribution is related to Chapter affiliation, not location of the high school.

(iii) The Selection Committee must have three committee members present to conduct interviews and evaluations.

(iv) The Selection Committee shall forward the number of selectees from each Chapter to the Dine' Advisory Committee, which will forward its recommendations to the UNTF Board of Trustees for approval.

(b) Application Process

(i) The student must submit a portfolio which shall include:

(A) Residency Verification form signed by the student's Chapter;

(B) A high school transcript showing the student's GPA;

(C) A copy of college acceptance letter(s);

(D) A list of and explanation of student's extracurricular activities and/or voluntary service projects performed during high school (grades 9-12);

(E) A typed essay with a maximum of 1,500 words describing the student's: 1. Post-high school educational plans; 2. Statement on career ambitions; 3. Two or three of the following topics: a) Statement of knowledge of Navajo culture and Navajo people in general; b) Navajo traditions, language, and folklore; or, c) explanation of an interesting event in Navajo history.

(ii) At least one letter of recommendation from either a high school official, community member, or elected official.

(iii) A resume.

(c) The Selection Committee will interview the student and ask the student to:

(i) Express his/her opinion, in Navajo, on the importance of maintaining the Navajo culture;

(ii) Express what a post-secondary education means to the student;

(iii) Express how the student may help the Navajo community after completing his/her college education;

(iv) Discuss the student's goals and how does he/she plan to reach them;

(v) Describe student's character qualities, including honesty, trustworthy, hard-working, respectful, humble and teachable, determined, self-confident, responsible, etc.

(3) Application Deadlines

(a) Announcements and information regarding the program will be made available during the first month of the start of the school year and again during the first week of January.

(b) The Application deadline is the FIRST Friday in March.

(c) The Selection Committee will conduct interviews by the THIRD Wednesday of March.

(4) Award

(a) Each Selection Committee member will review and assess the Application and the student's responses to the interview questions, and record weighted scores on the "Selection Committee OSAP Scoring Sheet". The individual committee scores will then be added up, totaled, and averaged on one "OSAP SELECTED CANDIDATE Form".

(b) The Selection Committee will forward an "OSAP SELECTED CANDIDATE Form" to UNTF staff for presentation to the Dine' Advisory Committee at its regularly scheduled April meeting.

(c) The Dine' Advisory Committee will make its recommendation to the Board of Trustees at its April regularly scheduled meeting.

(d) All awards, certificates, and the initial check will be prepared by the THIRD Friday of April.

(5) Award recipients shall be tracked by UNTF Staff to determine whether the recipients of the awards enroll in a post-secondary program.

KEY: high school senior award, students**September 21, 2016****51-10-205(4)(a)**

R661. Navajo Trust Fund, Trustees.**R661-19. Student Educational Enrichment Program.****R661-19-1. Student Educational Enrichment Program.**

(1) The Student Educational Enrichment Program (SEEP) is established to assist students in grades 9-12. The objective of the SEEP program is to augment student interests in academic and/or career endeavors. SEEP funds are to be used for participation in education-related events or programs, and/or competitive educational expositions including, but not limited to, college summer prep programs, math, science, and technology expositions, job-shadowing, and industry production methods which are recommended by a school counselor(s) or principal.

(a) The intent of SEEP is to enrich students academically and only expenses related to the academic program are eligible for UNTF funds.

(b) SEEP is restricted to academic programs and/or events held in the contiguous United States.

(c) Each Utah Chapter may select and/or recommend eligible students to participate in the SEEP.

(i) The Chapter's Community Services Coordinator and a member of the Dine' Advisory Committee will coordinate with the school events coordinator or contact person to ensure that the proposed event is eligible for SEEP funds.

(ii) Only academic events or activities coordinated with the school events coordinator or contact person are eligible for SEEP funds. The school events coordinator or contact person shall be responsible for the proposal and for coordinating with the Chapter for submittal to UNTF.

(2) SEEP provides supplemental funding for group activities. The applicant must provide proof that the SEEP funds will be matched with other funding sources. Individual expenses will not be covered by SEEP.

(3) Application Process

(a) The UNTF Student Educational Enrichment proposal form shall be used to apply for UNTF SEEP Funds.

(b) The proposal shall contain the following:

(i) A list of participants approved by the chapter and verified to be on UNTF's Census Database;

(ii) A program activity description and how it will meet the objectives of the SEEP program; ;

(iii) A budget showing total program costs, including tuition or program fees, travel, meals, and other costs;

(iv) Match-funding participation from tribal, state, county or other agencies as part of overall budget, and amounts requested from UNTF;

(v) School events coordinator or contact person telephone number and mailing address

(vi) School's statement or other proof of liability insurance for the group activity;

(vii) Approval by the Principal; and,

(viii) A Chapter resolution.

(4) UNTF matching funds shall not exceed 25% of the total cost and shall not exceed \$500.00 per eligible student.

(a) Checks will be payable to the school.

(b) The principal is required to sign the "Request for Payment" form.

(5) Each funded group shall submit a report to UNTF Staff demonstrating how the activity met the objectives of the SEEP program.

**KEY: students, Student Educational Enrichment Program
September 21, 2016 51-10-205(4)(a)**

R661. Navajo Trust Fund, Trustees.**R661-20. Photovoltaic (Solar) Systems Program.****R661-20-1. Photovoltaic (Solar) Systems Program.**

(1) Funding for this Program comes from the annual Chapter Project Allocation.

(a) UNTF funding is limited to \$15,000.00.

(b) The Chapter shall identify other match-funding sources in order to maximize the number of applicants that can receive assistance from UNTF.

(2) Objective of the Photovoltaic (Solar) Systems Policy is to provide financial assistance to individuals and entities for development of photovoltaic systems, installation and maintenance.

(a) Eligible applicants for the Photovoltaic Systems Program are individuals/families not served by a regular power line extension. Individuals or families who are included on a regular power line project to be completed within two years are not eligible for this program.

(b) Funding will be provided for photovoltaic packages which may include: panels; wiring; connections; receptacles; light fixtures; batteries; protective fencing; small buildings to house batteries and controls and to mount the equipment on; installation (labor); and, a maintenance plan.

(c) The maintenance plan shall include orientation for the applicant on care and maintenance of the system and troubleshooting.

(3) Procedure

(a) The applicant or the Chapter shall obtain at least two (2) quotes from qualified, certified/licensed photovoltaic system installers which specify all costs associated with the required package.

(b) The Chapter shall provide a project description that includes a list of the dwelling units of all families to be included in the proposed project.

(i) The description shall include the technical instruments and quality of photovoltaic system components which will be included in the wiring to be installed at each dwelling unit and may be depicted by an itemized material and instrument cost list.

(ii) The cost for each dwelling unit installation must be detailed in the proposed project description.

(c) Proof of licensing, insurance, certifications and warranties for all contractors, sub-contractors, or installers hired by the Chapter or applicant to install photovoltaic systems is required.

(d) Installers of photovoltaic systems shall ensure the systems are installed in accordance with the codes and standards of the National Fire Protection Association.

(e) An executed resolution from the Chapter, along with any priority listings, shall be submitted in support of the application.

(4) Ten percent (10%) of UNTF funding shall be retained until a final inspection is made. The Chapter may request final payment of the 10% retainage amount once the Chapter provides a copy of the warranty and written documentation to UNTF staff confirming that the Chapter is satisfied with the completed work.

**KEY: photovoltaic (solar) systems
September 21, 2016**

51-10-205(4)(a)

R710. Public Safety, Fire Marshal.**R710-2. Rules Pursuant to the Utah Fireworks Act.****R710-2-1. Purpose.**

The purpose of this rule is to establish the minimum safety standards for retail storage, handling, and sale of class C common state approved explosives indoor or outdoor; and requirements for licensing of importer, wholesaler, display operator, special effects operator, flame effects operator, and flame effect performing artist.

R710-2-2. Authority.

This rule is authorized by Section 53-7-204.

R710-2-3. Definitions.

(1) "AHJ" means authority having jurisdiction, and includes such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

(2) "Aerial device" means a cake that is a collection of mine/shell tubes that has a single covered fuse which is used to light several tubes in sequence. A cake may also be defined as an aerial repeater or multi-shot aerial and does not exceed more than 500 grams of pyrotechnic composition.

(3) "Bin" means a container or enclosed space for storing or displaying aerial fireworks that would reasonably limit the effect of the pyrotechnic material if ignited, and would not allow rapid spread of the fire to areas away from the immediate area of ignition.

(4) "Constant Visual Supervision" means that visual supervision is continually occurring or regularly recurring.

(5) "Covered fuse" means a fuse or designed point of ignition that is protected against accidental ignition by contact with a spark, smoldering item or small open flame.

(6) "Designated Store Employee" means a specific employee assigned that title or the employee who works at the work station where the measurement was taken to the aerial fireworks display.

(7) "Direct Line of Sight" means there is a clear unobstructed view to the aerial fireworks display.

(8) "Flame Effects" means Flame Effects Operator or Flame Effects Performing Artist.

(9) "Flame Effects Performing Artist" means a fire spinner, fire dancer or fire performer who is paid to perform professionally in a public location.

(10) "ICC" means International Code Council, Inc.

(11) "IFC" means International Fire Code, 2015 edition.

(12) "Licensed Operator" means any person who discharges, ignites, supervises, manages, oversees or directs the discharge of display fireworks, special effects fireworks, flame effects or flame effects performing artist.

(13) "NAFAA" means the North American Fire Arts Association.

(14) "NFPA" means National Fire Protection Association.

(15) "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.

(16) "Person" means an individual, company, partnership or corporation.

(17) "Pre-packaged" means that the product is wrapped in a clear plastic wrap or other equivalent material to prevent the fuse of the class C common state approved explosive from being accessible to the customer.

(18) "Resale" means the act of reselling class B or C explosives to a new party.

(19) "SFM" means the State Fire Marshal.

(20) "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects.

(21) "Temporary Stands and Trailers" means a non-

permanent structure used exclusively for the sale of fireworks.

R710-2-4. General Requirements.

(1) No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.

(2) If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.

(3) All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older.

(4) Those selling fireworks at retail sales locations shall be at least 16 years of age or older.

(5) A salesperson shall remain at the sales location at all times unless suitable locking devices or secured metal storage containers are provided to prevent the unauthorized access to the merchandise by others.

(6) Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

(7) All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.

(8) Storage of class C common state approved explosives shall not be located in residences to include attached garages.

(9) "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

(10) A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.

(11) All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.

(12) Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units with covered fuses.

R710-2-5. Indoor Sales.

(1) Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

(2) In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

(3) In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

(4) Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

(5) Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

(6) Display of Class C common state approved explosives inside of buildings shall not exceed a height greater than six feet above the floor surface.

(7) Rack storage of Class C common state approved explosives inside of buildings is prohibited.

R710-2-6. Temporary Stands, Trailers and Tents.

(1) Temporary stands, trailers and tents less than 200 square feet used for the retail sales of class C common state approved explosives shall be constructed in compliance with local rules, or if none, in accordance with nationally recognized practice. Tents having an area in excess of 200 square feet shall comply with IFC, Chapter 31.

(2) The general public shall not be allowed to enter a temporary stand or trailer.

(3) Each stand, trailer or tent less than 200 square feet shall have a minimum three foot wide unobstructed aisle, running the length of the stand, trailer or tent.

(4) All tents where customers enter inside shall have a minimum three foot wide unobstructed aisle and two separate exits located a reasonable distance apart and so located that if one is blocked the other will be available.

(5) The area used for sales of class C common state approved explosives in stands, trailers or tents shall be arranged to permit the customer to only touch or handle pre-packaged class C common state approved explosives. All non pre-packaged class C common state approved explosives shall be displayed in a manner which prevents the fireworks from being handled by the customer without the direct intervention of the retailer who shall be able to maintain visual contact with the customer.

(6) Temporary stands, trailers or tents for the sale of class C common state approved explosives shall be located at least 50 feet from other stands, trailers, tents, LPG, flammable liquid or gas storage and dispensing units.

(7) If the stand or trailer is used for the overnight storage of class C common state approved explosives, it shall be equipped with suitable locking devices to prevent unauthorized entry.

(a) Tents shall not be used for overnight storage of class C common state approved explosives unless on site security is provided.

(8) No person shall be allowed to sleep in any temporary stand, trailer or tent in which class C common state approved explosives are stored or sold.

(9) Stands, trailers or tents shall not be illuminated or heated by any device requiring an open flame or exposed heating elements.

(a) All heaters shall be approved by the AHJ.

(10) All illumination shall be installed in accordance with the temporary wiring section of the National Electric Code and approved by the AHJ.

R710-2-7. Display, Sale, and Signage of Aerial Devices.

(1) In addition to those requirements in Sections R710-2-4 through R710-2-6, all aerial devices shall be packaged and displayed for sale in a manner that would provide public safety by completing one of the following:

(a) provide constant visual supervision by direct line of sight by a designated store employee where the aerial display is not more than 25 feet from the designated employee's work station;

(b) provide constant visual supervision by direct line of sight by a store employee when all of the following requirements are met:

(i) the aerial display shall not be more than 40 feet from the designated employee's work station.

(ii) the aerial devices are restrained by using at least one of the following methods:

(A) the aerial devices are placed in a bin or bins that meets the definition stated in Section R710-2-3; or

(B) the aerial device shall have an additional layer of packaging requiring that the additional layer of packaging be punctured or torn to gain access to the fuse cover; or

(c) place the aerial devices in an area that is physically separated from the public so that the customer cannot handle the

aerial devices without the assistance of an employee.

(2) Where aerial devices are sold in permanent structures, the aerial device display shall be placed in a location that gives the customer access to the aerial devices just before the customer checks out and exits the store.

(3) Wherever aerial devices are sold, there shall be signage with a minimum font of one inch, to warn and inform the customer of the dangers of aerial devices and the signage shall state the following:

(a) aerial fireworks are designed to travel up to 150 feet into the air and then explode;

(b) aerial fireworks shall be placed on a hard level surface outdoors, in a clear and open area prior to ignition;

(c) anyone under the age of 16 shall not handle or operate aerial fireworks;

(d) ignition of aerial fireworks shall be a minimum of 30 feet from any structure or vertical obstruction;

(e) aerial fireworks shall not be ignited within 150 feet of the point of sale; and

(f) please read and obey all safe handling instructions before using aerial fireworks.

R710-2-8. Display Operator, Special Effects Operator, Flame Effects Operator, or Flame Effects Performing Artist Licenses.

(1) Application for a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be made in writing on forms provided by the SFM.

(2) Application for a license shall be signed by the applicant.

(3) Original licenses shall be valid from the date of issuance through December 31st of the year in which issued.

(a) Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

(4) Application for renewal of license shall be made before January 1st of each year.

(a) Application for renewal shall be made in writing on forms provided by the SFM.

(5) The SFM may refuse to renew any license pursuant to Section R710-2-10.

(a) The applicant, upon such refusal, shall also have those rights as are granted by Section R710-2-10.

(6) Every licensee shall notify the SFM, in writing, within 30 days of any change of his address or location.

(7) No licensee shall conduct his licensed business under a name other than the name which appears on his license.

(8) No license shall be issued to any person as licensee who is under 21 years of age.

(9) The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

(10) The applicant shall indicate on the application which license the applicant wishes to apply for:

(a) Display Operator;

(b) Special Effects Operator;

(c) Flame Effects Operator; or

(d) Flame Effects Performing Artist.

(11) Every person who wishes to secure a display licensed operator, special effects licensed operator, or flame effects licensed operator original license shall demonstrate proof of competence by:

(a) successfully passing an open book written examination and obtaining a minimum grade of 70%;

(i) the applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination;

(b) submit written verification with the application of having completed a display operators safety class, a special

effects operators safety class, a flame effects operator safety class or demonstrate previous experience acceptable to the SFM; and

(c) submit written verification with the application that the applicant has worked with a licensed display operator, special effects operator, or a flame effects operator for at least three shows or demonstrate previous experience acceptable to the SFM.

(12) Every person who wishes to secure an original flame effects performing artist operator license shall demonstrate proof of competence by:

(a) Successfully passing an open book written examination and obtaining a minimum grade of 70%.

(b) The applicant is allowed to use the statute, the administrative rule, NFPA 160, and the Artisan and Performer Safety Standards prepared by the SFM.

(c) Submit written verification with the application of having received a flame effects performing artist safety class or demonstrate previous experience acceptable to the SFM.

(d) Submit written verification with the application that the applicant has worked with a licensed flame effects performing artist for at least five training meetings or practice sessions or demonstrate previous experience acceptable to the SFM.

(13) Every holder of a valid license identified in Subsections R710-02-7(11) and R710-02-07(12) shall take a re-examination every five years, from date of original issuance.

(14) Applicants seeking an original license as stated in Subsection R710-2-8(11), may perform the various acts while under the direct supervision of a person holding a valid license for a period not to exceed 45 days.

(a) By the end of the 45-day period, the applicant shall have taken and passed the required examination and completed all other licensing requirements.

(15) At the end of the five-year period the licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall take a re-examination.

(a) The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date.

(b) The re-examination shall focus on the changes in the last 5 years to the adopted standards.

(c) The license holder is responsible to complete the re-examination and return it to the division in time to renew and also comply with the requirements listed in Subsection R710-2-8(16).

(16) After the issuance of the original license, and each year thereafter, the display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete a minimum of one of the following:

(a) complete one show or performance annually;

(b) attend an operator safety class or flame effects performing artist meeting annually; and

(c) work with another licensed display operator, special effects operator, flame effects operator, or flame effects performing artist with a show annually to demonstrate proof of competence.

(17) When the license has expired for more than one year, an application shall be made for an original license and the initial requirements shall be completed as required in Subsections R710-2-8(11) and R710-2-8(12).

(18) Every person who wishes to secure a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be at least 21 years of age.

(19) Every licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete an After Action Report within ten working days after the conclusion of any show and send it to the State Fire Marshal.

(a) If there are more than one licensed operator involved in the show, only one After Action Report needs to be sent to

the State Fire Marshal for that show.

R710-2-9. Importer or Wholesaler License.

(1) Application for an importer or wholesaler license shall be made in writing on forms provided by the SFM.

(2) Application for a license shall be signed by the applicant.

(a) If the application is made by a partnership, it shall be signed by all partners.

(b) If the application is made by a corporation or association, it shall be signed by a principal officer.

(3) Original licenses shall be valid from the date of issuance through December 31st of the year in which issued.

(a) Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

(4) The SFM may refuse to renew any license pursuant to Section R710-2-10.

(a) The applicant, upon such refusal, shall also have those rights as are granted by Section R710-2-10.

(5) Every licensee shall notify the SFM within 30 days of any change of address or location.

(6) No licensee shall conduct his licensed business under a name other than the name which appears on his license.

(7) No license shall be issued to any person as licensee who is under 21 years of age.

(8) The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

R710-2-10. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.

(2) The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, licensee, person employed for, the person having authority and management of a concern commits any of the following violations:

(a) the person or applicant is not the real person in interest;

(b) the person of applicant provides material misrepresentation or false statement on the application;

(c) the person or applicant refuses to allow inspection by the AHJ;

(d) the person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the written examination, demonstrate practical skills or complete the safety class;

(e) the person or applicant has been convicted of one or more federal, state or local laws;

(f) failure to accurately complete the After Action Report;

(g) the person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules;

(h) any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration; or

(i) there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of being an importer, wholesaler, display operator, special effects operator, flame effects operator or flame effects performing artist.

(3) A person may request a hearing on a decision made by the AHJ, by filing an appeal to the board within 20 days after receiving final notice from the AHJ.

(4) All adjudicative proceedings, other than criminal

prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with Section 63G-4-201.

(5) The board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

(6) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(7) Reconsideration of the board's decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(8) After a period of three years from the date of revocation, the board shall review the submitted written application of a person whose license or certificate of registration has been revoked.

(a) After timely notice to all parties involved, the board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the board.

(b) After the hearing, the board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

(9) Judicial review of all final board actions resulting from informal adjudicative proceedings shall be conducted pursuant to Section 63G-4-402.

R710-2-11. Amendments and Additions.

(1) The following are amendments and additions to the codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses,

(2) IFC, Chapter 56, Sections 5601.2.1 and 5601.2.2 are deleted, and rewritten to read as follows:

(a) For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:

(i) the retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored;

(ii) class C common state approved explosives shall not be stored in residences to include attached garages; and

(iii) The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

(A) in self storage units where the owner allows it;

(B) in a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business;

(C) in a locked or secured truck, trailer, or other vehicle at an approved location;

(D) in a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building;

(E) a wholesalers warehouse;

(F) an approved Group M occupancy;

(G) in a locked or secured metal container adjacent to the temporary stand, trailer or tent that is acceptable to the authority having jurisdiction; or

(H) any other structure or location approved by the authority having jurisdiction.

(b) During all other periods of time, except those stated in Subsection R710-2-11(2)(a), the storage, use, and handling of fireworks are prohibited, except as follows:

(i) the storage and handling of fireworks are allowed as required in IFC, Chapter 56 and these rules; and

(ii) the use of fireworks for display is allowed as set forth in IFC, Chapter 56 and these rules.

R710-2-12. Fire Department Displays.

(1) As required in Subsection 53-7-223(1) and as allowed for fire departments in Subsection 53-7-202(9)(b), the fire department's involvement in the discharge of display fireworks is allowed only for the discharge of display fireworks in that fire departments community or communities it has a contract to protect.

(2) Within 10 working days after the conclusion of a fireworks display, the fire chief or an assigned fire department member shall complete an After Action Report and send it to the State Fire Marshal.

(3) Any fire department member that will be involved in the discharge site as defined in NFPA 1123, shall complete a fireworks display safety class and examination on-line yearly to be allowed in the discharge area during the display.

(a) A copy of the completed certificate shall be sent to the SFM yearly to be placed in the fire department file.

(4) Any fireworks purchased by a community or fire department outside of the State of Utah shall require the securing of an annual importers license as required in Section 53-7-224.

KEY: fireworks

September 13, 2016

Notice of Continuation May 21, 2012

53-7-204

R710. Public Safety, Fire Marshal.**R710-6. Liquefied Petroleum Gas Rules.****R710-6-1. Purpose.**

The purpose of this rule is to establish the minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

R710-6-2. Authority.

This rule is authorized by Section 53-7-305.

R710-6-3. Definitions.

(1) "ASME" means the American Society of Mechanical Engineers.

(2) "AHJ" means authority having jurisdiction, and includes such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

(3) "ASME Stamp" means the symbol used to designate that the container has been built to the ASME Boiler and Pressure Vessel Code, Section VIII, Divisions 1 or 2, Rules for the Construction of Unfired Pressure Vessels.

(4) "Board" means the Liquefied Petroleum Gas Board.

(5) "Concern" means a person, firm, corporation, partnership, or association, licensed by the board.

(6) "Container" means the propane tank.

(7) "Dispenser" means pump assemblies, transfer hoses, meters and associated equipment that is mounted or anchored or may be installed inside of a steel cabinet. Note: Both the dispenser and container may be installed on a common base, or separate base, or separate location.

(8) "Dispensing System" means equipment in which LP Gas is transferred from one container to another in liquid form.

(9) "Division" means the Division of the State Fire Marshal.

(10) "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

(11) "ICC" means International Code Council, Inc.

(12) "IFC" means International Fire Code.

(13) "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

(14) "LPG" means Liquefied Petroleum Gas.

(15) "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

(16) "NFPA" means the National Fire Protection Association.

(17) "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.

(18) "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.

(19) "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

R710-6-4. Licensing.

(1) Type of license.

(a) Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.

(b) Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting

or transferring gas in liquid.

(c) Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

(d) Class IV: Those businesses listed below:

(i) dispensers;

(ii) sale of containers greater than 96 pounds water capacity; and

(iii) other LPG businesses not listed above.

(2) The application for a license to engage in the business of LPG as required in Subsection R710-6-5(1), shall be accompanied with proof of general liability insurance.

(a) The general liability insurance shall be issued by a general liability insurance carrier showing coverage of at least \$1,000,000 for each incident, and \$2,000,000 in total coverage.

(b) The licensee shall notify the SFM within 30 days after the general liability insurance coverage required is no longer in effect for any reason.

(3) The application shall be signed by an authorized representative of the applicant.

(a) If the application is made by a partnership, it shall be signed by at least one partner.

(b) If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.

(4) Following receipt of the properly completed application, an inspection, completion of all inspection requirements, and compliance with the provision of the statute and these rules, the Division shall issue a license.

(5) Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.

(6) Application for renewal shall be made on forms provided by the SFM.

(7) The board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license.

(a) The applicant shall, upon such refusal, have the same rights as are granted by Section R710-6-7 to an applicant for a license which has been denied by the board.

(8) Every licensee shall notify the Division, in writing, within 30 days of any change of his address.

(9) No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

(10) The division shall make available, upon request and without cost, to the enforcing authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

(a) Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

(11) The holder of any license shall submit such license for inspection upon request of the Division or the enforcing authority.

(12) Every licensed concern shall, within 20 days of employment, and within 20 days of termination of any employee, report to the division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

(13) Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

(14) A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division.

(a) Such statement shall attest to the fact that the license has been lost or destroyed.

(b) If the original license is found it shall be surrendered to Division within 15 days.

(15) Every license shall be identified by a number, delineated as P-number.

(16) Any accident where a licensee and LPG are involved must be reported to the board in writing by the affected licensee within 3 days upon receipt of information of the accident.

(a) The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident.

(b) If death or serious injury of persons, or property damage of \$5000 or more results from the accident, the report must be made immediately by telephone and followed by a written report.

(17) At their discretion, the board will investigate, or direct the division to investigate, all serious accidents.

R710-6-5. LP Gas Certificates.

(1) Application for an LPG certificate shall be made in writing to the division.

(a) The application shall be signed by the applicant.

(2) Every person who performs any act or acts described in Section 53-7-308, shall pass an initial examination in accordance with the provisions of this article.

(3) Types of initial examinations:

(a) Carburetion;

(b) Dispenser;

(c) HVAC/Plumber;

(d) Recreational Vehicle Service;

(e) Serviceman; and

(f) Transportation and Delivery.

(4) The initial examination shall include an open book written test or online test of the applicant's knowledge of the work to be performed by the applicant.

(a) The applicant is allowed to use the adopted statute, administrative rules, NFPA 54, NFPA 1192, and NFPA 58.

(b) Any other materials to include cellular telephones or related cellular equipment are prohibited in the examination room.

(c) The initial examination may also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant if so warranted by the test administrator.

(d) Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

(e) To successfully complete the written or online and practical initial examinations, the applicant must obtain a minimum grade of 70% in each portion of the examination taken.

(i) Each portion of the examination will be graded separately.

(ii) Failure of any one portion of the examination will not delete the entire test.

(f) Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

(g) Examinations may be given at various field locations as deemed necessary by the Division.

(a) Appointments for field examinations are required.

(h) Applicants that have successfully completed the requirements of the Certified Employee Training Program, as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived after appropriate documentation is provided to the Division by the applicant.

(i) As required in Subsections R710-6-6(2) and R710-6-6(3)(f), those applicants that have successfully completed the

requirements in Code of Federal Regulations, CFR 49, Parts 172.700, 172.704, 177.800 and 177.816, that correspond to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the division by the applicant.

(j) As required in Subsections R710-6-6(2) and R710-6-6(3)(c), those applicants that have successfully completed the Rocky Mountain Gas Association, Natural Gas Technician Certification Exam with a passing score, shall have the requirement for initial examination waived, after appropriate documentation is provided to the division by the applicant.

(k) As required in R710-6-6(2) and R710-6-6(3)(c), those applicants that are licensed journeyman plumbers as required in the Constructions Trades Licensing Act Plumber Licensing Rules, R156-55c, shall have the requirement for initial examination waived, after appropriate documentation is provided to the division by the applicant.

(5) Original LPG certificates shall be valid for one year from the date of issuance.

(a) Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid for one year from issuance.

(6) Application for renewal shall be made on forms provided by the Division.

(7) Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Subsection R710-6-6(3) as follows:

(a) the re-examination to comply with the provisions of Subsection R710-6-6(3) shall consist of an open book examination;

(b) the open book re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, and the adopted administrative rules;

(i) The re-examination may also consist of questions that focus on practices of concern as noted by the board or division;

(c) the certificate holder is responsible to complete the re-examination in sufficient time to renew;

(d) the certificate holder is responsible to submit to the division the correct renewal fees to complete that certificate renewal;

(e) as required in Subsection R710-6-6(7), those applicants that have successfully completed the requirements in Code of Federal Regulations CFR 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for re-examination waived, after appropriate documentation is provided to the Division by the applicant; and

(f) as required in Subsection R710-6-6(7), those applicants that provide the division with written verification of the completion of 40 hours of continuing training over the previous five-year period shall have the requirement for re-examination waived.

(8) The division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Subsection R710-6-7(2).

(9) The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

(10) Type.

(a) Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

(b) Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

(c) It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

(d) The requirements listed in Sections 4.10.2 and 4.10.3

of these rules do not apply to licensed journeyman plumbers who meet the requirements listed in 4.4.10 of these rules.

(e) The requirements listed in Sections 4.10.2 and 4.10.3 of these rules do not apply to those final consumers that meet the requirements stated in Section 53-7-308.

(11) Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within 30 days of such change.

(12) A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person.

(a) Such statement shall attest to the certificate having been lost or destroyed.

(b) If the original is found, it shall be surrendered to the Division within 15 days.

(13) Every LPG certificate issued shall contain the following information:

(a) the name and address of the applicant;

(b) the physical description of applicant;

(c) the signature of the LP Gas Board Chair or the State Fire Marshal;

(d) the date of issuance;

(e) the expiration date;

(f) type of service the person is qualified to perform; and

(g) have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

(14) No LPG certificate shall be issued to any person who is under 16 years of age.

(15) Restrictive Use.

(a) No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

(b) A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

(c) Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

(d) Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

(16) Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

(a) Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the division within 48 hours after taking said examination.

(i) Contentions shall state the reason for the objection.

(b) The decision as to the action to be taken on the submitted contention shall be by the board, and such decision shall be final.

(c) The decision made by the board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

(17) LPG Certificates shall not be transferable to another individual.

(a) Individual LPG certificates shall be carried by the person to whom issued.

(18) New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed 45 days from the initial date of employment.

(a) By the end of such period, new employees shall have taken and passed the required examination.

(b) In the event the employee fails the examination, re-

examination shall be taken within 30 days.

(c) The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

(19) Every LPG certificate shall be identified by a number, delineated as PE-number.

(a) Such number shall not be transferred from one person to another.

R710-6-6. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.

(2) The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the division if the division finds that the applicant, person employed for, or the person having authority and management of a concern commits any of the following violations:

(a) the person or applicant is not the real person in interest;

(b) the person or applicant provides material misrepresentation or false statement in the application, whether for an original or renewal certificate;

(c) the person or applicant refuses to allow inspection by the division or enforcing authority on an annual basis to determine compliance with the provisions of these rules;

(d) the person, applicant, or concern for a license does not have the proper or necessary facilities, including qualified personnel to conduct the operations for which application is made;

(e) the person or applicant for a LPG certificate does not possess the qualifications of skill or competence to conduct the operations for which application is made;

(i) this can also be evidenced by failure to pass the examination and/or practical tests;

(f) the person or applicant refuses to take the examination;

(g) the person or applicant has been convicted of a violation of one or more federal, state or local laws;

(h) the person or applicant has been convicted of a violation of the adopted rules or has been found by a board administrative proceeding to have violated the adopted rules;

(i) any offense or finding of unlawful conduct, or there is or may be a threat to the public's health or safety if the person or applicant were granted a license or certificate of registration;

(j) there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the person or applicant to safely and competently distribute, transfer, dispense or install LP Gas and/or its appliances;

(k) the person or applicant does not complete the re-examination process before the certificate or license expiration date; or

(l) the person or applicant fails to pay any fee as required in Section R710-6-8.

(3) A person whose license or certificate of registration is suspended or revoked by the division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

(4) All adjudicative proceedings, other than criminal prosecution, taken by the enforcing authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with Section 63G-4-201.

(5) The board shall act as the hearing authority, and shall convene after timely notice to all parties involved.

(i) The board shall be the final authority on the suspension or revocation of a license or certificate of registration.

(6) The board shall direct the division to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(7) Reconsideration of the board's decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(8) After a period of three years from the date of revocation, the board may review the written application of a person whose license or certificate of registration has been revoked.

(9) Judicial review of all final board actions resulting from informal adjudicative proceedings is available pursuant to Section 63G-4-402.

R710-6-7. Fees.

(1) The required fee shall accompany the application for license or LPG certificate or submission of plans for review.

(2) When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time.

(a) Examinations will be retaken with initial examination fees.

R710-6-8. Board Procedures.

(1) The board will review the division and enforcing authorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the board.

(2) The board may be asked to serve as a review board for items under disagreement.

(3) Board meetings shall be presided over and conducted by the chair and in his absence the vice chair.

(4) Meetings of the board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less than 21 days before the regularly scheduled board meeting.

(5) The chair of the board and board members shall be entitled to vote on all issues considered by the board. A board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

(6) Public notice of board meetings shall be made by the division as prescribed in Section 52-4-6.

(7) The division shall provide the board with a secretary, who shall prepare minutes and shall perform all secretarial duties necessary for the board to fulfill its responsibility.

(a) The minutes of board meetings shall be completed and sent to board members at least 21 days prior to the scheduled board meeting.

(8) The board may be called upon to interpret codes adopted by the board.

(9) The board Chair may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.

R710-6-19. Amendments and Additions.

(1) All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five years for leaks in all buried piping as follows:

(a) If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

(b) The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

(c) The inspection records shall be available to be inspected on a regular basis by the division.

(2) Whenever the division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the division shall

charge to the owner for each additional inspection, the re-inspection fee.

(3) All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

(a) those excluded from the act in Section 53-7-303;

(b) containers under federal control;

(c) containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas; and

(d) containers located at private residences.

(4) Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services.

(a) A letter shall be sent to the division by the licensed dealer stating that those using the self-serve key or card service have been trained.

(5) NFPA, Standard 58 Amendments:

(a) NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (d) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall be marked with the ASME stamp as defined in Section 2.1 of these rules. All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah, shall be marked with the ASME stamp as defined in Section 2.1 of these rules, and shall be inspected for approval by the Division. If the Division has concerns about the integrity or condition of the container, additional nondestructive testing may be required to include but not limited to hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs for additional testing required by the Division shall be the responsibility of the owner.

(b) NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (e) If an existing U68, U69, U200 or U201 specification container, more than 5000 water gallons, is relocated within the State of Utah, and does not bear the required ASME stamp as defined in Section 2.1 of these rules, the container cannot be reinstalled unless the container has received a "Special Classification Permit" from the Division. Specifications of the type of container, container history if known, material specifications and calculations, and condition of the container shall be submitted to the Division by the person seeking the "Special Classification Permit". The Division shall inspect the container for approval. If the Division has concerns about the integrity or condition of the container, additional nondestructive tests such as hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs of testing and evaluations shall be the responsibility of the owner. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

(c) NFPA, Standard 58, Section 5.2.1.6 is amended to add the following sentence at the end of the section: (A) Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

(d) NFPA Standard 58, Sections 5.9.3.2(2)(a) and (b) are deleted and rewritten as follows: Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

(e) NFPA, Standard 58, Section 6.6.1.2 is amended to add the following at the end of the section: When guard posts are installed they shall be installed meeting the following requirements:

(i) constructed of steel not less than four inches in diameter and filled with concrete;

(ii) set with spacing not more than four feet apart;
 (iii) buried three feet in the ground in concrete not less than 15 inches in diameter; and
 (iv) set with the tops of the posts not less than three feet above the ground.

(f) NFPA, Standard 58, Section 6.6.3 is amended to add the following section: 6.6.3.9 Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

(g) NFPA, Standard 58, Section 6.6.6 is amended to add the following: (N) All metallic equipment and components that are buried or mounded shall have cathodic protection installed to protect the metal and shall meet the following requirements:

(i) sacrificial anodes shall be installed as required by the size of the container. If more than one sacrificial anode is required they shall be evenly distributed around the container;

(ii) sacrificial anodes shall be connected to the container or piping as recommended by the manufacturer or using accepted engineering practices; and

(iii) sacrificial anodes shall be placed as near the bottom of the container as possible and approximately two feet away from the container.

(h) NFPA, Standard 58, Section 6.25.3.19 is added as follows: On dispensing installations, 1000 gallon water capacity or less, where the dispensing cabinet is located next to the LP Gas container, stainless steel wire braid hose of more than 36 inches in length may be used on vapor and liquid return lines only. The hose shall be secured and routed in a safe and professional manner, marked with the date of installation, and shall be replaced every five years from that installation date.

(i) NFPA, Standard 58, Section 6.27.3.2, the last sentence of the section is deleted and rewritten as follows: Existing installations shall comply with this requirement by March 31, 2011.

(j) NFPA, Standard 58, Section 8.4.1.1(1) is amended as follows: On line one remove "5ft (1.5m)" and replace it with "10 ft (3m)".

and

(f) violation of the adopted Statute or Rules - \$210 to \$900;

(i) triple the license fee.

**KEY: liquefied petroleum gas
 September 13, 2016
 Notice of Continuation October 5, 2015**

53-7-305

R710-6-11. Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is for any reason held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board, such decision shall not affect the validity of the remaining portion of these rules.

R710-6-12. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-13. Penalties.

(1) Civil penalties for violation of any rule or referenced code shall be as follows:

(a) concern failure to license - \$210 to \$900;

(i) double the fee plus the cost of the license;

(b) person failure to obtain LPG Certificate - \$30 to \$90;

(i) double the fee plus the cost of the certificate;

(c) failure of concern to obtain LPG Certificate for employees who dispense LPG - \$210 to \$900;

(i) double the fee plus the cost of the license;

(d) concern doing business under improper class - \$140 to \$600;

(i) double the fee;

(e) failure to notify SFM of change of address - \$60;

(i) based on two hours of inspection fee at \$30 per hour;

R710. Public Safety, Fire Marshal.**R710-7. Concerns Servicing Automatic Fire Suppression Systems.****R710-7-1. Purpose.**

The purpose of this rule is to establish regulations governing those concerns that service Automatic Fire Suppression Systems. These rules apply to systems regulated by the state adopted editions of National Fire Protection Association, Standard 12, Standard on Carbon Dioxide Extinguishing Systems; N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 2009 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition; N.F.P.A., Standard 17, Standard for Dry Chemical Extinguishing Systems; N.F.P.A., Standard 17A, Standard for Wet Chemical Extinguishing Systems; N.F.P.A., Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations; N.F.P.A., Standard 2001, Clean Agent Fire Extinguishing Systems.

R710-7-2. Authority.

This rule is authorized by Section 53-7-204.

R710-7-3. Definitions.

- (1) "Annual" means a period of one year or 365 days.
- (2) "Board" means Utah Fire Prevention Board.
- (3) "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.
- (4) "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.
- (5) "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.
- (6) "Employee" means those persons who work for a licensed concern which may include but are not limited to assigned agents and others who work on a contractual basis with a licensee using service tags of the licensed concern.
- (7) "Hydrostatic Test" means subjecting any cylinders requiring periodic pressure testing procedures specified in these rules.
- (8) "Inspection Authority" means the local fire authority, or the SFM, and their authorized representatives.
- (9) "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing automatic fire suppression systems.
- (10) "N.F.P.A." means National Fire Protection Association.
- (11) "Recognized Testing Laboratory" means a State Fire Marshal list of acceptable labs.
- (12) "Service" means a complete inspection of an automatic fire suppression system to include maintenance, repair, modification, testing, or cleaning, as set forth in the adopted N.F.P.A. standards.
- (13) "System" means an Automatic Fire Suppression System.
- (14) "SFM" means Utah State Fire Marshal or authorized deputy.

R710-7-4. Adoption of Codes.

- (1) The following standards are adopted as code:
 - (a) the National Fire Protection Association, N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 2009 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition;
 - (b) all existing wet chemical automatic fire suppression systems not UL300 listed shall be removed, replaced or upgraded to a UL300 listed system; and
 - (c) no person shall market, distribute, sell, install or

service any automatic fire suppression system in this state, unless it meets the following:

- (A) it complies with these rules; and
- (B) it has been tested by, and bears the label of a testing laboratory which is accepted by the SFM as qualified to test automatic fire suppression systems.

R710-7-5. Licensing.

(1) No person or concern shall engage in the business of selling, installing, servicing, repairing, testing or modifying any automatic fire suppression system without obtaining a license from the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

(2) Every license shall be identified by type. The type of license shall be determined on the basis of the act or acts performed by the licensee or any of the employees. Every licensed concern shall be staffed by qualified personnel and shall be properly equipped to perform the act or acts for the type of license issued.

(3) Licenses shall be any one, or combination of the following:

(a) Class H1 - A licensed concern which is engaged in the installation, modification, service, or maintenance of engineered and/or pre-engineered automatic fire suppression systems.

(b) Class H2 - A licensed concern which is engaged in service and maintenance only of automatic fire suppression systems to include hydrostatic testing.

(4) Application for a license to conduct business as an automatic fire suppression system concern shall be made in writing to the SFM on forms provided by the SFM.

(a) A separate application for license shall be made for each branch office, or separate place or business location of the applicant.

(b) The application for a license to conduct business as an automatic fire suppression system concern, shall be accompanied with proof of public liability insurance.

(i) The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage.

(ii) The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

(c) The application shall be signed by the applicant.

(i) If the application is made by a partnership, it shall be signed by all partners.

(ii) If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

(5) The applicant or licensee shall allow the SFM and any of his authorized deputies to enter, examine, and inspect any premises, building, room or vehicle used by the applicant in the service of automatic fire suppression systems to determine compliance with the provisions of these rules.

(a) The inspection will be conducted during normal business hours, and the owner or manager shall be given a minimum of 24-hours notice before the appointed inspection.

(b) The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained.

(c) The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of automatic fire suppression systems.

(6) Following receipt of the properly completed application, and compliance with the provisions of the statute and these rules, the SFM shall issue a license.

(a) Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed concern.

(7) Original licenses shall be valid for one year from the

date of issuance.

(a) Thereafter, each license shall be renewed annually and renewals shall be valid for one year from the previous date of expiration.

(b) No original license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

(c) In the event that a license is not renewed prior to the expiration date, the applicant shall be required to apply for an original license with a new license number.

(8) Application for renewal shall be made as directed by the SFM.

(a) The failure to renew the license will cause the license and license number to become invalid.

(b) No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

(c) A renewed license shall be valid for one year from the previous date of expiration.

(9) A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon request.

(10) SFM may refuse to renew any license that is authorized, pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original license which has been denied by the SFM.

(11) Every licensee shall notify the SFM, in writing, within 30 days, of any change of address or location of business.

(12) No licensee shall conduct the licensed business under a name other than the name or names which appear on the license.

(13) Every licensed concern shall, within 30 days of employment or termination of an employee or contracted agent, notify the SFM of the name, address, and certification number of that person.

(14) No license shall be issued to any person as licensee who is under 18 years of age.

(15) Every concern is responsible for the acts of its employees or assigned agents relating to installation and servicing of automatic fire suppression systems.

(16) No license shall constitute authorization for any licensee, or any of the employees or contracted agents, to enter upon, or into, any property, building, or machinery without the consent of the owner or manager.

(a) No license shall grant authorization to enforce the International Fire Code or these rules.

(17) No license issued pursuant to this section shall be transferred from one concern to another.

(18) Every license shall be identified by a number, delineated as H-number.

(a) Such number may only be transferred from one concern to another when approved by the SFM.

(19) The following minimum material and equipment requirements shall be maintained at each business location or vehicle of the applicant where servicing work is performed:

- (a) calibrated scales with ability to:
 - (i) weigh gas cartridges to within 1/4 ounce of manufacturers specifications; and
 - (ii) weigh cylinders accurately for systems being serviced;
- (b) manufacturers specifications for each system serviced;
- (c) nitrogen pressure filling equipment;
- (i) nitrogen supply;
- (ii) pressure regulator - 750 p.s.i. minimum; and
- (iii) filling adapters;
- (d) wet and dry chemical systems;
- (i) extinguishing agents, compatible with systems serviced;
- (ii) fusible links;
- (iii) safety pins;

- (iv) an assortment of gaskets and o-rings compatible with systems serviced;

- (v) gas cartridges as required according to manufacture's specifications;

- (vi) current reference manuals, to include manufacture's service manuals; and

- (vii) cocking or lockout tool;

- (e) clean agent, halon and CO2 systems

- (i) have access to, or meet the requirements for a U.L. approved filling station;

- (ii) have available in inventory, or have immediate access to, detectors compatible with systems serviced;

- (iii) calibration equipment such as electrical testers and detector testers;

- (iv) control panel components;

- (v) release valves; and

- (vi) current reference manuals.

- (f) This list does not, however, include all items that may be necessary in order to conduct a complete system installation, modification or service.

(20) Accurate records shall be maintained for five years by the licensee, of all service work performed.

(a) These records shall be made available to the SFM, or authorized deputies, upon request.

(b) These records shall include the following:

- (a) the name and address of all serviced locations;

- (b) type of service performed; and

- (c) date and name of person performing the work.

R710-7-6. Certificates of Registration.

(1) No person shall service any automatic fire suppression system without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts.

(2) Application for a certificate of registration to work on automatic fire suppression systems shall be made in writing to the SFM on forms provided by the SFM.

- (a) The application shall be signed by the applicant.

- (b) The concern license shall certify in writing to the SFM that the applicant has been trained and is qualified to perform all work authorized by the certificate of registration.

(3) The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests to determine the applicant's knowledge to work on automatic fire suppression systems.

(a) Pictured identification of the applicant for a certificate of registration may be requested by the SFM or his deputies.

(b) Examinations will be given according to the following schedule:

- (i) on the first and third Tuesdays of each month; or

- (ii) when holidays conflict with these days, the day immediately following will be used.

- (c) An appointment will be made to take an examination at least 24 hours in advance of the examination date.

- (d) Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

- (e) All certification examinations given are open book examinations.

- (i) The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination.

- (ii) Any other materials to include cellular telephones, lap tops, iPads, iPods, note books or any other memory storage device are prohibited in the examination room.

- (f) Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

- (g) Each certification examination taken has a time limit

of two hours to completion.

(i) Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

(h) If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

(4) To successfully pass the written examination, the applicant must obtain a minimum grade of 70% in each portion of the examination taken.

(5) The examination required shall include a written test of the applicant's knowledge of the work to be performed, the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

(6) Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

(a) Every contention as to the validity of individual questions of the examination shall be made in writing within 48 hours after taking said examination.

(b) The decision of the SFM shall be final.

(7) Following receipt of the completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

(8) Original certificates of registration will be valid for one year from the date of application.

(a) Thereafter, each certificate of registration will be renewed annually and renewals will be valid for one year from the previous date of expiration.

(b) In the event that a certificate of registration is not renewed prior to the expiration date, the applicant shall be required to apply for an original certificate of registration with a new license number.

(c) The failure to renew a certificate of registration will cause the certificate of registration and the certificate of registration number to become invalid.

(d) The holder of an invalid certificate of registration shall not perform any work on automatic fire suppression systems.

(9) Renewal is the responsibility of the holder of the Certificate of Registration.

(a) Application for renewal will be made as directed by the SFM.

(b) A renewed certificate of registration shall be valid for one year from the previous date of expiration.

(10) Every holder of a valid certificate of registration will take a re-examination every five years, from the date of original certificate, as follows:

(a) the re-examination shall consist of one open book examination to be administered by the SFM at least 60 days before the renewal date;

(b) the re-examination will consist of questions that focus on changes in the last five years to the NFPA standards, the statute, and adopted practices of concerns noted by the board or SFM;

(c) the certificate holder is responsible to complete the re-examination prior to expiration and in sufficient time to renew; and

(d) the certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

(11) The SFM may refuse to renew any certificate of registration for the reasons that are authorized pursuant to Section R710-7-9.

(a) The applicant will, upon such refusal, have the same rights as are granted by Section R710-7-9 to an applicant for an original certificate of registration which has been denied by the SFM.

(12) The holder of a certificate of registration will submit such certificate for inspection, upon request of the SFM, any authorized deputies, or any local fire official.

(13) Any change of address of any holder of a certificate of registration will be reported by the registered person to the SFM within 30 days of such change.

(a) Such change will also be made by the holder of the certificate of registration on the reverse side of the certificate of registration card.

(14) A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed.

(15) No certificate of registration shall be issued to any person who is under 18 years of age.

(16) Restrictive Use

(a) No certificate of registration will constitute authorization for any person to enter upon or into any property or building without expressed permission from an authorized individual.

(b) No certificate of registration will constitute authorization for any person to enforce any provisions of these rules or the International Fire Code.

(c) Regardless of the acts authorized to be performed by the licensed concern, only those acts for which the applicant for a certificate of registration has qualified will be permissible by such applicant.

(17) Certificates of registration will not be transferable.

(a) Individual certificates of registration will be carried by the person to whom issued.

(18) No certificate of registration will be issued to any person unless that person is a licensee or an employee of a licensed concern.

(19) New employees of a licensed concern may perform the various acts while under the direct supervision of a person holding a valid certificate of registration for a period not to exceed 45 days from the initial date of employment.

(20) Every certificate will be identified by a number, delineated as HE-number.

R710-7-7. Service Tags and Labels.

(1) Tags shall be not more than five and one-half inches in height, nor less than four and one-half inches in height, and not more than three inches in width, nor less than two and one-half inches in width. Tags may be any color except red.

(2) One service tag will be attached to each automatic fire suppression system in such a position as to be conveniently inspected.

(3) The signature and certificate of registration number of the person performing the work shall be signed legibly on the service tag.

(a) All information pertaining to complete date, type of servicing, and type of system will be indicated on the tag by perforations in the appropriate space provided.

(4) A new service tag will be attached to a properly functioning system each time service is performed.

(a) A system not in compliance shall not receive a service tag, but shall receive a non-compliance tag as required in Section R710-7-7(9).

(5) The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

(6) No person shall deface, modify, alter or remove any active service label or tag attached to or required to be attached to any automatic fire suppression system.

(7) All service tags shall be designed as required by the SFM.

(8) Six year maintenance and hydrostatic test labels will be affixed by a heatless process; and

(a) the labels will be:

- (i) applied only when the system is recharged or undergoes six year maintenance servicing or hydrostatic testing;
 - (ii) durable to withstand the effects of weather and adverse conditions; and
 - (iii) designed as directed by the SFM.
- (9) Non-compliance tags:
- (a) will be affixed in a conspicuous location to any system failing to:
 - (i) meet service specifications; or
 - (ii) fully comply with manufacturers specifications or these rules;
 - (b) shall be red in color;
 - (c) will be designed as required by the SFM; and
 - (d) shall remain in place until corrections are complete.
 - (e) After placing the non-compliance tag on the system, the service person shall notify the local fire chief or his authorized representative.
 - (i) The service person shall also furnish a copy of the service report to the authority having jurisdiction.

R710-7-8. Requirements For All Approved Systems.

- (1) Maintenance will be conducted on extinguishing systems at least every six months or immediately after use or activation.
 - (a) When fusible links are a required portion of the system, fusible links will be replaced semiannually or as required by the manufacturer of the system.
 - (b) Fusible links will show the date when installed by year only.
 - (c) Fusible links will not be used after February 1 of the next year showing a previous years date.
- (2) Interchanging of parts from different manufactured systems is prohibited.
 - (a) Parts shall be specifically listed and compatible for use with the designed system.
 - (3) All replaced parts to the system serviced will be returned to the system owner or manager after completion of the service.
 - (a) Parts that are required to be returned to the manufacturer due to warranty are exempt.
 - (4) Any system requiring a hydrostatic test, will not be serviced until such system has been subjected to, and passed, the required test.
 - (a) A non-compliance tag will not be accepted to meet the requirements of this section.
 - (5) At the time of installation, and during any service, all servicing will be done in accordance with the manufacturers instructions, adopted statutes, and these rules.
 - (a) Systems will be placed and remain in an operable condition, free from defects which may cause malfunctions.
 - (b) Discharge nozzles and piping will be free of obstructions or substances.

R710-7-9. Adjudicative Proceedings.

- (1) All adjudicative proceedings performed by the agency shall proceed informally as authorized by Sections 63G-4-202 and 63G-4-203.
- (2) The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing automatic fire suppression systems commits any of the following violations:
 - (a) the person or applicant is not the real person in interest;
 - (b) the person or applicant provides material misrepresentation or false statement on the application;
 - (c) the person or applicant refuses to allow inspection by the SFM, his duly authorized deputies;
 - (d) the person or applicant for a license or certificate of

registration does not have the proper facilities and equipment, to conduct the operations for which application is made;

- (e) the person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application was made, as evidenced by failure to pass the examination and practical tests pursuant to Section R710-7-6;
- (f) the person or applicant has been convicted of one or more federal, state or local laws;
- (g) the person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules;
- (h) any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration; or
- (i) there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire suppression systems.

(3) A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the board if requested by that person within 20 days after receiving notice.

(4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with Section 63G-4-201.

(5) The board shall act as the hearing authority, and shall convene after timely notice to all parties involved.

(a) The board shall be the final authority on the suspension or revocation of a license or certificate of registration.

(6) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(7) Reconsideration of the board decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(8) After a period of three years from the date of revocation, the board shall review the submitted written application of a person whose license or certificate of registration has been revoked.

(a) After timely notice to all parties involved, the board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the board.

(b) After the hearing, the board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

(9) Judicial review of all final board actions resulting from informal adjudicative proceedings is available pursuant to Section 63G-4-402.

R710-7-10. Validity.

If any section, subsection, sentence, clause, or phrase of these rules is for any reason held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

R710-7-11. Fees.

(1) The required fee will accompany the application for license or certificate of registration.

(a) License or certificate of registration fees will be refunded if the application is denied.

(2) When a certificate of registration has expired for more than one year, an application will be made for an original certificate as if the application was being made for the first time.

(a) Examinations will be re-taken with initial fees.

KEY: fire prevention, systems
September 13, 2016
Notice of Continuation May 21, 2012

53-7-204

R710. Public Safety, Fire Marshal.**R710-11. Fire Alarm System Inspecting and Testing.****R710-11-1. Purpose.**

The purpose of this rule is to establish minimum rules to provide regulation to those who inspect and test fire alarm systems.

R710-11-2. Authority.

This rule is authorized by Section 53-7-204.

R710-11-3. Definitions.

(1) "Annual" means a period of one year or 365 calendar days.

(2) "Authority Having Jurisdiction (AHJ) means the State Fire Marshal, his duly authorized deputies, the local fire enforcement authority, and building officials.

(3) "Board" means Utah Fire Prevention Board.

(4) "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

(5) "Inspecting and Testing" means work completed to ensure that the system operates properly as required by applicable statute, codes and standards.

(6) "IFC" means International Fire Code.

(7) "NFPA" means National Fire Protection Association.

(8) "NICET" means National Institute for Certification in Engineering Technologies.

(9) "SFM" means State Fire Marshal or authorized deputy.

(10) "Service" means inspecting and testing of fire alarm systems.

R710-11-4. Certificates of Registration.

(1) No person shall engage in the inspecting and testing of fire alarm systems without first receiving a certificate of registration issued by the SFM.

(2) The following groups are exempted from the requirements of this part:

(a) the AHJ that is performing the initial installation acceptance testing of the fire alarm system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules; and

(ii) the building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section R710-11-7(2), to satisfy requirements set by company policy, insurance, or risk management.

(3) Application for a certificate of registration to inspect and test fire alarm systems shall be made in writing to the SFM on forms provided by the SFM and signed by the applicant.

(a) The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

(b) The applicant shall indicate on the application which of the three technician levels the applicant will apply for:

(i) Basic Fire Alarm Technician;

(ii) Fire Alarm Technician; or

(iii) Master Fire Alarm Technician.

(c) The application for a certificate of registration shall be accompanied with proof of public liability insurance from the certificate holder or employing concern.

(i) A public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage shall issue the public liability insurance.

(ii) The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is no longer in effect for any reason.

(4) The SFM shall require all applicants for a certificate of registration as a technician to complete the following:

(a) Basic Fire Alarm Technician shall:

(i) pass a written examination on basic testing of fire alarm

systems or shall be certified as a NICET I; and

(ii) complete the manipulative skills task book.

(iii) Work as a Basic Fire Alarm Technician shall be performed under direct supervision of a Fire Alarm Technician or Master Fire Alarm Technician.

(b) Fire Alarm Technician shall:

(i) pass all the requirements listed for Basic Fire Alarm Technician; and

(ii) pass a written examination on basic testing and maintenance of fire alarm systems limited up to and including four story buildings or shall be certified as a NICET II.

(c) Master Fire Alarm Technician shall:

(i) pass all the requirements listed for Basic Fire Alarm Technician and Fire Alarm Technician; and

(ii) pass a written examination on fire alarm systems in buildings over four stories, voice alarm/evacuation systems, and smoke control systems or shall be certified as a NICET III or as NICET IV.

(5) Examinations.

(a) All certification examinations given are open book examinations;

(i) The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination; and

(ii) Any other materials to include cellular telephones are prohibited in the examination room.

(b) Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

(c) Each certification examination taken has a time limit of two hours to completion.

(i) To successfully pass the written examination, the applicant must obtain a minimum grade of 70%.

(ii) Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

(d) If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency level will be administered.

(e) To successfully complete the manipulative skills task book, all required skill tasks shall be signed as completed by a person duly qualified or certified in that skill.

(6) Those applicants that have successfully completed the requirements outlined in Section R710-11-5, and are certified by NICET in the skills that correspond to the work to be performed by the applicant, shall have the requirement for written examination waived after appropriate documentation is provided to the SFM by the applicant.

(7) Following receipt of the properly completed application and successful completion of required testing, the SFM shall issue a certificate of registration.

(8) Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance.

(9) Application for renewal shall be made as directed by the SFM.

(10) Every holder of a valid certificate of registration shall take a re-examination every three years, from date of original certificate.

(a) The re-examination shall consist of an examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date.

(b) The re-examination will consist of questions that focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the board or the SFM.

(c) The certificate holder is responsible to complete the re-

examination and return it to the SFM in sufficient time to renew.

(d) The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

(11) The SFM may refuse to renew any certificate of registration pursuant to R710-11-8(2).

(a) The applicant shall, upon such refusal, have the same rights as are granted by Section R710-11-8.

(12) The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.

(13) Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

(14) Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within 30 days of such change.

(15) A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

(16) No certificate of registration shall be issued to any person who is under 18 years of age.

(17) Restrictive Use.

(a) A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

(b) Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

(18) Right to Contest.

(a) Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

(b) Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

(c) The decision as to the action to be taken on the submitted contention shall be made by the SFM, and such decision shall be final.

(d) The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

(19) Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

(20) Every certificate shall be identified by a number. The certificate of registration shall be worn in a visible manner when inspecting and testing fire alarm systems.

(21) New or existing employees desiring to attain a certificate of registration may perform the various acts required while under the constant direct supervision of a person holding a valid certificate of registration for a period not to exceed 90 days from the initial date of employment or beginning service in the field.

R710-11-5. Service Tags.

(1) Size and Color.

(a) Tags shall be not more than five and one-half inches in height, nor less than four and one-half inches in height, and not more than three inches in width, nor less than two and one-half inches in width.

(b) Tags may be produced in any color except red or a variation of red.

(c) A red tag shall be used to indicate the system fails to ensure a reasonable degree of protection for life and property from fire through inspecting and testing of fire alarm systems as required in NFPA, Standard 72, and the requirements of these rules.

(i) After placing the red tag on the system, the certified

person shall notify the AHJ and provide the AHJ with a written copy of the noted deficiencies.

(d) If the AHJ reviews the noted deficiencies on the attached red tag and finds the deficiencies are not consistent with the requirements in NFPA, Standard 72, the red tag shall be removed by the certified person that attached the red tag.

(2) The service tag shall be attached at the fire alarm control panel for each system inspected or at other locations as needed to show compliance.

(a) The service tag shall be attached to the control panel in such a position as to be conveniently inspected by the AHJ.

(3) Service tags shall bear the following information:

(a) provisions of Section 4.7;

(b) approved Seal of Registration of the SFM;

(c) certificate of registration number of individual who performed or supervised the service or services performed;

(d) signature of individual whose certificate of registration number appears on the tag;

(e) concern's name;

(f) concern's address;

(g) type of service performed;

(h) type of system serviced; and

(i) date service is performed.

(b) The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

(4) Legibility.

(a) The certificate of registration number required in Section R710-11-5(3)(c), and the signature required in Section R710-11-5(3)(d), shall be printed or written distinctly.

(b) All information pertaining to date and type of service shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

(5) An sample service tag is on file in the State Fire Marshal's Office for review.

(6) A new service tag shall be attached to a system each time a service is performed.

(7) The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL".

(8) Removal.

(a) No person or persons shall remove a service tag except when further service is performed.

(b) No person shall deface, modify, or alter any service tag that is required to be attached to the system.

(c) A red tag can only be removed by written authority from the AHJ. Verbal authority to initially remove the tag is allowed as long as it is followed by written authority.

(9) Service tags may be printed for any number of years not to exceed eight years.

R710-11-6. Seal of Registration.

(1) The official seal of registration of the SFM shall consist of the following:

(a) the image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal";

(i) the top portion of the outer ring shall have the wording "Utah State"; and

(ii) the bottom portion of the outer ring shall have the wording "Fire Marshal".

(b) Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the certification number assigned to the person.

(2) No person shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

(3) Certificate holders or concerns shall use the Seal of Registration on every service tag.

(4) No person or concern shall continue the use of the Seal

of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the certificate of registration.

(5) Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-11-7. Amendments and Additions.

(1) At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

(2) Fire alarm systems shall be inspected annually by a person holding the appropriate certificate of registration as required in Section R710-11-4(1).

(3) Newly installed fire alarm systems are exempt from the annual testing requirement required in Section R710-11-7(2), for one year from the approval date of the initial installation acceptance testing.

R710-11-8. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as authorized by Sections 63G-4-202 and 63G-4-203.

(2) The issuance, renewal, or continued validity of a certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant or the person has committed any of the following violations:

- (a) the applicant or person is not the real person of interest;
- (b) the applicant or person provides material misrepresentation or false statements on the application;
- (c) the applicant or person refuses to allow inspection by the SFM, or his duly authorized deputies;
- (d) the applicant or person for a certificate of registration does not have the proper equipment to conduct the operations for which application is made;
- (e) the applicant or person for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination or manipulative skills pursuant to Section R710-11-4(3) of these rules;
- (f) the applicant or person refuses to take the examination required by Section R710-11-4(3) of these rules;
- (g) the applicant or person fails to pay the certification of registration, examination or other required fees as required in Section R710-11-9;
- (h) the applicant or person has been convicted of violating one or more federal, state or local laws;
- (j) the applicant or person has been convicted of a violation of the adopted rules or been found by a board administrative proceeding to have violated the adopted rules;
- (k) any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a certificate of registration; or

(l) there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire alarm system equipment.

(3) A person whose certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the board if requested by that person within 20 days after receiving notice.

(4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with Section 63G-4-201.

(5) The board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The board shall be the final authority on the suspension or revocation of a

certificate of registration.

(6) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(7) Reconsideration of the board decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(8) After a period of three years from the date of revocation, the board shall review the submitted written application of a person whose certificate of registration has been revoked. After timely notice to all parties involved, the board shall convene to review the revoked person's application, and that person shall be allowed to present themselves and their case before the board. After the hearing, the board shall direct the SFM to allow the person to complete the certification process or shall direct that the revocation be continued.

(9) Judicial review of all final board actions resulting from informal adjudicative proceedings shall be conducted pursuant to Section 63G-4-402.

R710-11-9. Fees.

(1) The required fee shall accompany the application for certificate of registration.

(a) Certificate of registration fees will be refunded if the application is denied.

(2) When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time.

KEY: fire alarm systems

August 23, 2016

Notice of Continuation September 28, 2016

53-7-204

R714. Public Safety, Highway Patrol.**R714-158. Vehicle Safety Inspection Program Requirements.****R714-158-1. Authority.**

This rule is authorized by Subsection 53-8-204(5).

R714-158-2. Purpose.

The purpose of this rule is to set standards governing the administration and enforcement of the safety inspection program in accordance with Title 53, Chapter 8, Part 2.

R714-158-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-8-102, 53-8-202, and the Federal Motor Carrier Safety Regulations contained in Subchapter B, Chapter III, Subtitle B of the Code of Federal Regulations Title 49 - Transportation.

(2) In addition:

(a) "agency action" means a written warning, suspension, revocation, or denial applied against a certification, license, or application.

(b) "applicant" means a person who has applied to the division for a permit or certificate;

(c) "certificate" means the authorization for a safety inspector to conduct safety inspections;

(d) "conviction" means an adjudication of guilt regarding criminal conduct, including:

(i) a finding of guilt by a court or a jury;

(ii) a guilty plea;

(iii) a plea of nolo contendere; or

(iv) a plea which is held in abeyance pending the successful completion of a probationary period;

(e) "division" means the Vehicle Safety Inspection section of the Utah Highway Patrol;

(f) "fleet station" means a station that only conducts safety inspections on vehicles that are owned or leased by the same company that owns the station;

(g) "inspection certificate" means the certificate of inspection given when a vehicle passes or fails the requirements of the inspection program;

(h) "licensee" means a person who has been granted a permit or certificate by the division;

(i) "OEM" means original equipment manufacturer;

(j) "online inspection program" means the web-based inspection program used to record safety inspections;

(k) "permit" means the authorization for a person to operate a station;

(l) "revocation" means the permanent deprivation of a certificate or permit;

(m) "inspector" means a person with a valid certificate who is employed by a licensed station;

(n) "station" means a business or government facility located in Utah that is managed or operated by a valid permit holder and conducts safety inspections;

(o) "suspension" means the temporary deprivation of a certificate or permit;

(p) "sticker" means a safety inspection sticker distributed by the division to a station which affixes it to a vehicle with a gross vehicle weight rating of 26,001 pounds or more, or is equipped with an air braking system regardless of weight rating, when that vehicle meets the safety inspection requirements;

(q) "sticker report" means the document of inspection given when a vehicle with a gross vehicle weight rating of 26,001 pounds or more, or a vehicle equipped with an air braking system regardless of weight rating, fails or meets the safety inspection requirements; and

(r) "Utah Interactive" means the company that has contracted with the division for the setup and facilitation of the online inspection program.

R714-158-4. Safety Inspection Station Permits.

(1) To be eligible for a new permit or to retain a current permit, an applicant shall:

(a) employ a station manager who possesses a valid certificate;

(b) obtain and maintain a \$10,000 surety bond or garage keepers insurance for the station that the permit holder seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government or fleet station;

(c) obtain and maintain a valid business license for the station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government station;

(d) obtain and maintain a valid business registration from the Utah Department of Commerce for the safety inspection station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government station; and

(e) enroll the station in the online inspection program after receiving approval from the division.

(2)(a) An applicant seeking to manage or operate a safety inspection station shall submit a completed permit application packet to the division.

(b) The permit application packet shall include:

(i) a completed permit application form provided by the division;

(ii) a non-refundable permit application fee, unless the station the applicant seeks to manage or operate is a government station;

(iii) proof of a \$10,000 surety bond or garage keepers insurance for the station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government or fleet station;

(iv) documentation of a valid business license for the station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government station; and

(v) documentation of a valid business registration from the Utah Department of Commerce for the safety inspection station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government station.

(3)(a) Upon receipt of a completed application packet, the division shall review the materials to determine if the applicant is eligible for a permit.

(b) The division may request additional information to determine if the applicant is eligible for a permit.

(4) After receipt of all of the necessary documentation, the division shall inspect the station that the permit holder intends to manage or operate to determine if the station meets the requirements of the safety inspection program.

(5)(a) If the division determines that the applicant has met all of the requirements for a permit, the division shall issue the permit to the applicant.

(b) The permit is non-transferable.

(6)(a) If the division determines that the applicant does not meet the requirements for a permit, the division shall issue a denial letter to the applicant.

(b) The denial letter shall state the reasons for denial and indicate that the applicant may have the matter reviewed as provided in Section 11 of this Rule.

R714-158-5. Building and Equipment Requirements.

(1) To be eligible for a permit or to maintain a permit, the inspection station building and site must meet the following conditions:

(a) the building is capable of housing the vehicles to be inspected;

(b) the building has a level concrete or asphalt floor; and

(c) the site has a business sign of a permanent construction, properly displaying the business name that is listed on the business station application, unless the station the applicant seeks to manage or operate is a government or fleet station.

(2) An inspection station shall have the following tools and equipment:

(a) a current hard copy of the safety inspection manual, or an electronic copy that has been downloaded as a file on a station computer;

(i) accessing the manual online does not meet this requirement;

(b) the necessary hand tools to conduct an inspection;

(c) a hoist capable of lifting all four tires simultaneously off of the ground;

(i) stations in operation prior to January 1, 2009 are exempt from this requirement, but the station shall possess a hoist or heavy-duty jack with jack stands;

(d) measuring gauges and instruments for determining minimum specifications in the inspection process;

(e) a two-piece approved light meter kit capable of measuring window light transmittance at a minimum of +/- 3%;

(f) a dial indicator for measuring ball joint and suspension component tolerances;

(g) a tire tread depth gauge;

(i) a riveted brake lining gauge may be used for tire tread depth gauge;

(h) a tire pressure gauge;

(i) a tape measure; and

(j) the following brake gauges:

(i) bonded;

(ii) riveted;

(iii) disc pad;

(iv) rotor; and

(v) drum.

(3) An inspection station that performs inspections on heavy motor vehicles, trailers, or buses shall have the following tools and equipment:

(a) a hoist;

(b) a two-piece light meter approved by division;

(c) hand tools including wrenches, screwdrivers, and ratchets;

(d) a dial indicator for measuring ball joint and suspension component tolerances;

(e) a tire tread depth gauge;

(f) a current hard copy of the safety inspection manual, or an electronic copy that has been downloaded as a file on a station computer;

(i) accessing the manual online does not meet this requirement;

(g) a tire pressure gauge;

(h) a king pin gauge;

(i) a fifth wheel jaw tester;

(j) a measuring tape;

(k) a current copy of the School Bus Standards and Inspection Manual, if the station inspects school buses; and

(l) the following brake gauges:

(i) bonded;

(ii) riveted;

(iii) disc pad;

(iv) rotor; and

(v) large drum.

(4) The division may grant an exception to the minimum requirements of this section upon written request from the applicant or licensee that shows extenuating circumstances justifying the exemption.

R714-158-6. Safety Inspector Certificates.

(1) To be eligible for a certificate, an applicant shall:

(a) be 18 years of age or older; and

(b) attend and successfully complete the safety inspector training course.

(2)(a) An applicant seeking to perform safety inspections shall submit a completed certificate application packet to the division.

(b) The application packet shall include:

(i) a completed certificate application form provided by the division;

(ii) a non-refundable certificate application fee;

(iii) a passport, copy of a valid driver license, or identification card issued by a state government within the United States or one of its territories to verify the applicant's identity; and

(iv) documentation that the applicant attended and successfully completed the safety inspector training course.

(3)(a) Upon receipt of a completed application packet, the division shall review the materials to determine if the applicant is eligible for a certificate.

(b) The division may request additional information to determine if the applicant is eligible for a certificate.

(4)(a) If the division determines that the applicant has met all of the requirements for a certificate, the division shall issue the certificate to the applicant.

(b) The certificate is non-transferable and shall expire five years from the date of issuance.

(5)(a) If the division determines that the applicant does not meet the requirements for a certificate, the division shall issue a letter of denial to the applicant.

(b) The denial letter shall state the reasons for denial and indicate that the applicant may have the matter reviewed as provided in Section 11 of this Rule.

R714-158-7. Renewal of Certificates.

(1) To be eligible to renew a certificate, a licensee shall retake and successfully complete the safety inspector training course within six months prior to the expiration date of the certificate, either in person or online.

(2)(a) A licensee seeking to renew a certificate must submit a completed certificate renewal packet to the division.

(b) The certificate renewal packet shall include:

(i) a written renewal form provided by the division;

(ii) a non-refundable certificate renewal fee; and

(iii) documentation the inspector has re-taken and successfully completed the safety inspector training course, either in person or online, within six months prior to the expiration date of inspector's certificate.

(3)(a) Upon receipt of a completed renewal packet, the division shall review the materials to determine if the licensee is eligible to renew the permit or certificate.

(b) The division may request additional information to determine if the licensee is eligible to renew the certificate.

(4) If the division determines the licensee has met all of the requirements for renewal, it shall renew the certificate for the licensee.

(5)(a) If the division determines the licensee does not meet the renewal requirements, it shall deny the renewal application for the certificate and notify the licensee in writing.

(b) The denial notification shall state the reasons for denial and state the licensee may have the decision reviewed by filing a written request for hearing within 30 calendar days as provided in Section 11 of this Rule.

R714-158-8. Safety Inspector Training Program.

(1)(a) The safety inspector training course shall consist of a 16-hour training program provided by an educational institution approved by the division.

(b) The educational institution shall:

(i) possess all of the necessary tools to conduct a safety

inspection in accordance with Administrative Rules R714-160, R714-161, R714-162, and R714-163;

(ii) teach the safety inspection curriculum approved by the division; and

(iii) administer the quizzes and final test generated by the division.

(2) The safety inspector training course shall be taught by instructors that are employees of an educational institution approved by the division.

(3) Students shall attend all 16 hours of the safety inspector training course and pass the final test in order to successfully complete the course.

(4)(a) Any student who falsifies information or cheats on a quiz or test during the safety inspection training course shall be removed from the course and not allowed to complete it.

(b) A student removed from a safety inspection training course may not retake the class for a period of one year.

R714-158-9. General Safety Inspection Program Requirements.

(1) A permit holder shall be responsible for the management and operation of a station and shall:

(a) acquire and maintain the required equipment at the station;

(b) ensure all inspections are performed at the station and are conducted in accordance with Administrative Rules R714-158-8, R714-160, R714-161, R714-162, R714-163;

(c) ensure all inspection certificates are issued through the online inspection program, unless the program is temporarily unavailable;

(i) if the online inspection program is unavailable for more than three business days, the station shall contact the division;

(d) retain a copy of all station records for a period of one year, including plate brake test records;

(e) make the station and its records available for inspection by the division;

(f) ensure the station has an adequate supply of paper inspection certificates and stickers;

(g) ensure the paper inspection certificates and stickers are safeguarded against loss or theft;

(h) immediately report missing or stolen paper inspection certificates or stickers to the division;

(i) display the permit at the station in a prominent location that is easily visible to the public;

(j) report any changes in the station's name or address to the division;

(k) report any changes in the permit holder's mailing address to the division;

(l) notify the division if there is a change in inspectors who are employed at the station;

(m) ensure that the station uses and displays only the name of the station provided to the division; and

(n) ensure that the station's Utah Interactive account is not delinquent.

(2) An inspector shall:

(a) work under the direction of a permit holder;

(i) an inspector may also be a permit holder for the same station;

(b) only conduct inspections onsite at the station designated on the employer's permit;

(c) conduct all inspections fully as described in Administrative Rules R714-160, R714-161 R714-162, and R714-163 before an inspection certificate or sticker may be issued or a customer is informed about any reject items;

(d) conduct all safety inspections honestly and thoroughly;

(e) not coerce customers or sell unneeded parts or repairs;

(f) advise customers the vehicle need not be repaired or adjusted at the station that conducted the safety inspection, but needed repairs may be made at any business selected by the

customer;

(g) obtain the customer's authorization before performing any repair or adjustments;

(h) return any part that is replaced to the customer, upon request;

(i) show a part that is to be replaced or repaired to the customer if it cannot be returned, upon request;

(j) issue all inspection certificates using the online inspection program if the station is enrolled in the program, unless the program is temporarily unavailable;

(k) enter the information from a paper inspection certificate to the online inspection program within 72 hours after the program becomes available again;

(l) only use his or her assigned username and password issued by the division when using the online inspection program to complete a safety inspection;

(m) complete all paper safety inspection records legibly;

(n) fully complete everything on the inspection certificates, stickers, and sticker reports on the same date the vehicle inspection is conducted;

(o) conduct inspections, issue certificates, and attach stickers to vehicles only at the station where the inspector is employed, unless the inspection is performed on a government-owned emergency fire response vehicle or ambulance;

(p) not sell or transfer inspection certificates, stickers, or sticker reports to another station;

(q) complete inspection paperwork or enter the information in the online inspection program whenever a vehicle is inspected;

(r) avoid conducting safety inspections on his or her personally owned or operated vehicles;

(s) report any change to his or her mailing address to the division; and

(t) notify the division if he or she changes employers.

R714-158-10. Inspection Certificates, Stickers, and Sticker Reports.

(1) Inspection certificates will be issued in books of 50 for passenger/light truck, books of 25 for ATVs, and books of 25 for stickers and sticker reports.

(2) A station may purchase two books of inspection certificates for passenger/light truck, four books of inspection certificates for ATV, and four books of sticker reports to use when the online inspection program is temporarily unavailable.

(3) A station may not purchase another book of inspection certificates or sticker reports until the station returns one of the used books that it previously purchased to the division.

(4) Unused books of inspection certificates, sticker reports, or stickers may be returned to the division for reimbursement.

R714-158-11. Grounds for the Denial, Suspension, or Revocation of Station Permit or Inspector Certificate.

(1) An applicant or licensee may be denied, suspended, or revoked for any of the following reasons:

(a) a violation of any Utah state or federal safety inspection law, rule or regulation;

(b) providing any false or misleading information during:

(i) the application or renewal process for a permit or certificate;

(ii) a division investigation or station visit; or

(iii) an administrative hearing; or

(c) conviction of a crime involving dishonesty, deception, or theft.

(2) In determining whether denial, suspension or revocation of a permit or certificate is appropriate, the division shall consider the applicant or licensee's previous history with the safety inspection program.

(3)(a) If an inspector is suspended, the inspector may not conduct safety inspections or represent him or herself to be an

inspector.

(b) If a permit holder is suspended, no one at the permit holder's station may conduct safety inspections or represent the station as a safety inspection station.

(c) An applicant or licensee who is denied a certificate or permit may not be eligible to reapply for a period of 90 days from the date of denial.

(d) A licensee whose certificate or permit is revoked shall not be eligible to reapply for another certificate or permit for a period of one year from the date of revocation.

R714-158-12. Adjudicative Proceedings.

(1) All adjudicative proceedings set forth in this section shall be conducted informally as provided in Section 63G-4-202.

(2) The division shall initiate agency action against an applicant or licensee with a notice of agency action in accordance with Section 63G-4-201.

(3)(a) An applicant or licensee who receives a notice of agency action indicating that the division intends to deny, suspend, or revoke a permit or a certificate may request a hearing by filing a written request for hearing with the division within 15 calendar days from the date of the notice of agency action.

(b) A hearing shall be held before a hearing officer designated by the division, within 30 calendar days of the day that the division receives the timely written request for hearing, unless the parties agree to a later date.

(c) If a timely request for hearing is filed, the agency action shall be stayed until the division's hearing officer issues a written decision.

(d) At the hearing, the applicant or licensee shall have an opportunity to explain why the division should not take agency action.

(e) The hearing officer shall issue a written decision in accordance with Section 63G-4-203 within ten business days of the hearing.

(4)(a) An applicant or licensee may appeal the hearing officer's decision to the council by filing an appeal with the division within 30 calendar days of the issuance of the hearing officer's decision.

(b) If a timely appeal to the council is filed, the agency action shall be stayed until the council issues a written decision.

(c) A hearing shall be held before the council within 30 calendar days of the day that the division receives the written appeal, unless the parties agree to a later date.

(d) At the hearing, the applicant or licensee shall have an opportunity to explain why the division's action should be overturned.

(e) The council shall issue a written decision in accordance with Section 63G-4-301 within ten business days of the hearing.

(f) The written decision of the council shall constitute final agency action and is subject to judicial review pursuant to Section 63G-4-402.

R714-158-13. Procedures for Safety Inspection Station Closure.

(1) When a safety inspection station is going out of business, the manager or owner of the station shall:

(a) notify the division of the effective date of the closure at least one week prior to the date of closure;

(b) discontinue conducting safety inspections on the date of closure; and

(c) within one week after the date of closure, return the following to the division:

- (i) the station permit;
- (ii) all inspection certificates;
- (iii) all stickers; and
- (iv) all sticker reports.

(2) The division shall cancel online access to the Vehicle Safety Inspection System on the effective date of the station closure.

**KEY: motor vehicle safety, inspections
September 27, 2016
Notice of Continuation July 2, 2012**

53-8-204

R714. Public Safety, Highway Patrol.**R714-160. Equipment Standards for Passenger Vehicle and Light Truck Safety Inspections.****R714-160-1. Authority.**

This rule is authorized by Subsections 53-8-204(5) and 41-6a-1601(2).

R714-160-2. Purpose.

The purpose of this rule is to set minimum equipment standards governing passenger vehicle and light truck inspections in accordance with Sections 53-8-204 and 41-6a-1601.

R714-160-3. Definitions.

(1) Terms used in this rule are found in Sections 41-1a-102, 41a-6a-102, and 49 C.F.R. 571, et seq.

(2) In addition:

(a) "acute area" means the area of a windshield inside a 6 inch border measured from the edge of the glass where it meets the molding around the entire outside of the windshield;

(b) "CNG" means compressed natural gas;

(c) "custom vehicle" means a motor vehicle as defined in Subsection 41-6a-1507(1);

(d) "division" means the Vehicle Safety Inspection section of the Utah Highway Patrol;

(e) "GVWR" means gross vehicle weight rating;

(f) "inspector" means a person with a valid certificate who is employed by a licensed station;

(g) "lifted vehicle" means a vehicle that has been raised from the original manufacturer's frame height;

(h) "lowered vehicle" means a vehicle that has been lowered from the original manufacturer's height;

(i) "online inspection certificate" means an inspection certificate created electronically through the Vehicle Safety Inspection System;

(j) "online inspection program" means the web-based inspection program used to record safety inspections;

(k) "OEM" means original equipment manufacturer;

(l) "paper inspection certificate" means an inspection certificate created by paper form;

(m) "passenger vehicle" means a vehicle with a gross vehicle weight rating less than 26,001 pounds that transports passengers, including the driver, or property, or any combination thereof;

(n) "salvage vehicle" means any vehicle as defined in Subsection 41-1a-1001(8);

(o) "station" means a business or government facility located in Utah that is managed or operated by a valid permit holder and conducts safety inspections; and

(p) "vintage vehicle" means a motor vehicle or trailer as defined in Section 41-21-1.

R714-160-4. Incorporation of Federal Motor Vehicle Safety Standards.

This rule incorporates by reference the standards found in 49 C.F.R. Part 571 as the minimum standards a motor vehicle must meet to pass a safety inspection, unless state law provides a different standard.

R714-160-5. Applicability of Rule.

This rule applies to all passenger vehicles and light trucks.

R714-160-6. Inspection Procedures.

(1) The inspector shall complete the following tasks prior to inspecting the vehicle:

(a) collect the appropriate paperwork such as registration, title, and bill of sale;

(b) verify the Vehicle Identification Number (VIN);

(c) record the owner's full name and complete vehicle

information;

(d) record vehicle mileage;

(e) enter the inspection date and inspector number if using a paper form of the inspection certificate; and

(f) determine whether the motor vehicle needs a test drive and the purpose of test;

(i) if a test drive is needed off the station's property, the customer shall be informed.

(2) The inspector shall examine the vehicle's interior by completing the following tasks:

(a) inspect the windshield, side, and rear windows;

(b) identify mirror requirements and inspect mirrors;

(c) inspect seats and seat belts;

(d) inspect steering wheel/column, including horn and airbags;

(e) inspect brake pedal assembly and emergency brake system;

(f) inspect windshield wipers and washers;

(g) inspect heater and defrost;

(h) inspect dash, including warning indicator lights and speedometer;

(i) inspect doors and door parts; and

(j) check the neutral starting switch to determine whether the starter operates with the gear selector only in park or neutral on vehicles with automatic transmissions.

(3) The inspector shall examine the vehicle's exterior by completing the following tasks:

(a) inspect headlight high and low beams, including aiming;

(b) inspect parking lights, tail lights, signal lights, brake lights, marker lights, and reflectors;

(c) inspect for the proper color of lights;

(d) inspect the wheels and lugs, looking for cracks and loose or missing lugs;

(e) inspect tires for wear, damage, and proper inflation;

(f) inspect body of vehicle, including fenders, doors, hood, glass, and bumpers;

(g) inspect for broken glass, parts, and accessories; and

(h) inspect window tint with a tint meter, measuring light transmittance on the front side windows and windshield;

(i) the inspector shall record the tint readings on the certificate using the online inspection program or on the Safety Inspection Certificate if not using the online program.

(4) The inspector shall examine items under the vehicle's hood by completing the following tasks:

(a) inspect belts and hoses;

(b) inspect power steering system;

(c) inspect battery and electrical wiring;

(d) inspect exhaust system;

(e) inspect master cylinder and braking system; and

(f) inspect the fuel system.

(5) The inspector shall examine items under the vehicle by completing the following tasks:

(a) inspect steering system, including the wheel bearings, tie rods, rack, and pinion;

(b) inspect suspension components, including the springs and shocks;

(c) inspect exhaust and fuel system components;

(d) inspect body and floor pans; and

(e) inspect engine, transmission mounts, and drivetrain.

(6) The inspector shall examine the braking system by completing the following tasks:

(a) inspect brake pads/shoes;

(b) inspect brake rotors/drums;

(c) inspect brake components, both hydraulic and mechanical;

(d) inspect brake hoses for fluid leaks;

(e) record brake measurements using the online inspection program or on the Safety Inspection certificate if not using the

online inspection program;

(f) issue a rejection inspection certificate on vehicles that fail a plate brake test but have adequate pad and or shoe thickness;

(g) if issuing a rejection inspection certificate, record the brake pad measurement on the certificate; and

(h) if a visual inspection is performed, remove one front and one rear wheel to inspect brake components.

(7) When inspecting a lifted vehicle, the inspector shall:

(a) inspect fenders and verify that each one covers the full width of the tire;

(b) inspect mud flaps;

(c) inspect frame height based on the GVWR;

(d) inspect for body lift;

(e) inspect for stacked blocks;

(f) inspect for modification of brake hoses;

(g) inspect headlight aim and vertical height; and

(h) inspect altered or modified steering and suspension parts that have been shortened, lengthened, welded.

(8) When inspecting lowered vehicles, the inspector shall:

(a) inspect that fenders cover full width of tire;

(b) inspect for mud flaps, when required;

(c) inspect for minimum ground clearance;

(d) inspect for removal of original suspension components;

(e) inspect headlight aim and vertical height; and

(f) inspect altered or modified steering and suspension parts that have been shortened, lengthened, or welded.

(9) The following procedures apply when a vehicle fails the safety inspection and the inspector is using a paper inspection certificate:

(a) the inspector shall complete a full vehicle inspection even after a reject item is found;

(b) if a vehicle fails an inspection and no repairs are immediately made at that station, then the inspector shall give the customer a rejection inspection certificate;

(c) the inspector shall not sign the rejection inspection certificate;

(d) a customer with a rejected vehicle has up to 15 calendar days to complete all repairs and return to the same station to verify repairs at no charge;

(i) customers may contact the division to request a waiver of additional fees if they exceed 15 days for circumstances beyond their control, such as backordered parts;

(e) the inspector shall return the State Tax and Owner copies to the division within 45 days of the inspection date for rejected vehicles that fail to return to the inspecting station;

(f) the inspector shall document any item rejected and repaired during an inspection as repaired on the inspection certificate;

(g) any inspector at a station may verify repairs of rejected items;

(h) if all rejected items have been repaired, the verifying inspector shall sign the safety inspection certificate; and

(i) if the verifying inspector is not the original inspector, the verifying inspector shall sign the safety inspection certificate, and enter his or her inspector license number on the Safety Inspection Certificate.

(10) The following procedures apply when a vehicle fails the safety inspection and the inspector is using an online inspection certificate:

(a) if all rejected items have been repaired, the verifying inspector shall sign the safety inspection certificate;

(b) if no repairs are made, the inspector shall print the rejection inspection certification and give it to the customer;

(c) the inspector shall not sign a rejection inspection certificate;

(d) a customer with a rejected vehicle has up to 15 calendar days to complete all repairs and return to any station that conducts online inspections to verify repairs at no charge;

(i) customers may contact the division to request a waiver of additional fees if they exceed 15 days for circumstances beyond their control, such as back ordered parts;

(e) the inspector shall document any item rejected and repaired during an inspection as repaired on the inspection certificate; and

(f) any inspector at any station that conducts online inspections may certify repairs made to rejected items. No additional charges may be added.

(11) The following procedures apply when a vehicle passes the safety inspection and the inspector is using a paper inspection certificate:

(a) the inspector performing the inspection shall sign the vehicle inspection certificate; and

(b) the customer shall be given the State Tax and Owner copies of the inspection certificate.

(12) The following procedures apply when a vehicle passes the safety inspection and the inspector is using an online inspection certificate:

(a) the inspector shall print the vehicle inspection certificate and give it to the customer; and

(b) the inspector performing the inspection shall sign the printed inspection certificate prior to giving it to the customer.

(13) The following inspection report procedures apply when the inspector is using paper inspection certificates:

(a) the report forms shall include the following information:

(i) date the inspection was completed;

(ii) owner's name;

(iii) year and make of the vehicle;

(iv) vehicle identification number;

(v) appropriate notation in any of the repair columns;

(vi) total cost of the repair, including the inspection fee; and

(vii) inspection certificate or sticker number;

(b) inspection certificate or sticker numbers of paper books shall be listed in numerical order starting with the lowest number and listed in groups of 25;

(c) a separate report form shall be used for the inspection certificates and for the stickers;

(d) duplicate inspection certificates or stickers shall be noted as "duplicate" on the report form;

(e) lost or stolen inspection certificates or stickers shall be listed as "lost or stolen" on the report form;

(f) inspection certificates and stickers rendered unusable through mishap shall be recorded as "voided" on the report form and inspection certificates and stickers shall be returned to the Vehicle Safety Inspection office;

(g) rejected vehicles that have not returned within 15 days to the original station shall be listed in the same order, and the words "rejected" printed on the same line;

(h) failure to submit the required reports may result in suspension or revocation of a permit; and

(i) the inspector shall return the State Tax and Owner copies to the division within 45 days of the original inspection date for rejected vehicles that fail to return for re-inspection.

R714-160-7. Registration.

(1) When reviewing vehicle registration papers, the inspector shall:

(a) check the vehicle registration certificate, identification number on the vehicle, license plates, and vehicle description for agreement;

(b) enter the manufacturer's vehicle identification number and license plate number into the online program or record on the safety inspection certificate if not using the online program;

(c) advise the customer when paperwork disagreements are accidental or clerical in nature; and

(d) issue a rejection inspection certificate when:

(i) the registration certificate, vehicle identification number, license plate, and vehicle description are not in agreement; or

(ii) the vehicle identification number is missing or obscured.

(2) The inspector shall examine the vehicle's license plates and complete the following requirements:

(a) if the vehicle is registered, verify the license plates are securely mounted and clearly visible; and

(b) advise the customer when:

(i) a license plate is not securely fastened to the front and rear of the vehicle, in a horizontal position, not less than 12 inches from the ground when measured from the bottom of the license plate;

(ii) a license plate is not located in a clearly visible position; or

(iii) a license plate is covered with foreign material or otherwise not clearly legible.

R714-160-8. Tires and Wheels.

(1) When examining the tire and wheels, the inspector shall:

(a) check tires for cuts, cracks, or sidewall plugs; and

(i) advise the customer when a tire has weather cracks, but no cords showing; or

(ii) issue a rejection inspection certificate when a tire has sidewall plugs, cuts, or cracks deep enough to expose cords;

(b) check tires for indication of tread separations; and

(i) issue a rejection inspection certificate when tire integrity has been compromised due to visible bumps, bulges, or tire separation;

(c) check tire pressure for proper inflation with tire pressure gauge; and

(i) issue a rejection inspection certificate when:

(A) a tire is flat, has a noticeable air leak, or is inflated to less than half, or 50% of the vehicle manufacturer's recommended tire pressure; or

(B) a tire is over inflated;

(d) check tires for regrooving or recutting; and

(i) issue a rejection inspection certificate when a tire is regrooved and is not identifiable as regroovable;

(e) check tires for "restricted usage only" markings; and

(i) issue a rejection inspection certificate when a tire is marked "for farm use only", "off-highway use only", "for racing only", "for trailers only", or other non-highway use;

(f) check tires for the same size and same type of construction, but mismatched tread design is allowed; and

(i) issue a rejection inspection certificate when tires on the same axle are not the same size or construction;

(g) check tire wear; and

(i) advise the customer when tread wear bars are touching the road surface; or

(ii) issue a rejection inspection certificate when:

(A) the tread depth is less than 2/32 inch when measured in any two adjacent major tread grooves at three equally spaced intervals around the circumference of the tire. Tread depth measurement shall not use a tread wear bar; or

(B) secondary rubber is exposed in the tread or sidewall area;

(h) check wheels for damage and proper mounting; and

(i) issue a rejection inspection certificate when:

(A) wheel bolts, nuts, studs, or lugs are loose, missing, or not properly fastened;

(B) wheels are bent, cracked, re-welded, or have elongated bolt holes;

(C) spacers are used to increase the wheel track width; or

(D) bead lock wheels are installed that do not meet the

SAE J2530 Aftermarket Wheel Performance Requirements and Test Procedures;

(i) check vehicle tires for proper size and weight load ratings; and

(i) issue a rejection inspection certificate when:

(A) tires do not meet the proper weight load rating for the vehicles actual gross vehicle weight; or

(B) tires are mounted on wheels that are not within tire manufacturer specifications;

(j) check that fenders and mudflaps are in place when required; and

(i) advise the customer when:

(A) fenders or fender extenders do not cover the full width of a tire;

(B) rear tires do not have the top 50% of the tire covered by mudflaps, fenders, or the vehicle body construction when required; or

(C) rear mudflaps are not directly aligned with the tire and at least as wide as the tire when required; or

(ii) issue a rejection inspection certificate when:

(A) tire tread is not fully covered by existing fenders or fender extenders;

(B) tires make contact with any other vehicle parts or accessories;

(C) fender flares or mud flaps are not made of durable material; or

(D) fender flares or mud flaps are not secured properly; and

(k) check for studded snow tires; and

(i) advise the customer when studded snow tires are mounted on a vehicle between April 1 and October 14 of any year.

R714-160-9. Steering.

(1) The steering system must be inspected to determine if excessive wear or maladjustment of the linkage or steering gear exist. Vehicle must be on a smooth, dry, level surface. On vehicles equipped with power steering, the engine must be running and the fluid level, belt tension and condition must be adequate before testing.

(2) When inspecting the vehicle's steering system, the inspector shall:

(a) measure lash at steering wheel; and

(i) issue a rejection inspection certificate when steering wheel movement exceeds 2 inches for power steering, 3 inches for manual steering, or 0.4 of an inch for rack and pinion;

(b) check the size of steering wheel; and

(i) issue a rejection inspection certificate when steering wheel is less than 13 inches in outside diameter or is not of full circular construction;

(c) check for binding or jamming conditions by turning the steering wheel through a full right and left turn without the brake being applied; and

(i) issue a rejection inspection certificate when:

(A) steering is incapable of being turned fully from right to left; or

(B) one wheel turns before the opposite wheel;

(d) check the condition and tension of steering belts if the vehicle is equipped with power steering; and

(i) advise the customer when steering belts are cracked or are not properly adjusted; or

(ii) issue a rejection inspection certificate when steering belts are frayed or torn;

(e) check the condition of the power steering system, hoses, hose connections, cylinders, and valves; and

(i) issue a rejection inspection certificate when:

(A) hoses or hose connections have a dripping leak; or

(B) cylinders or valves have a dripping leak;

(f) check the condition of the pump and check for secure mounting and proper fluid level in the reservoir; and

(i) issue a rejection inspection certificate when:

(A) pump mounting parts are loose or broken;
 (B) the system is inoperative;
 (C) reservoirs have a dripping leak; or
 (D) the fluid level is below minimum fluid level indicators;
 (g) check for separation of the shear capsule from bracket and general looseness of steering wheel and column; and
 (i) issue a rejection inspection certificate when:
 (A) the shear capsule is separated from bracket; or
 (B) the wheel and column can be moved as a unit;
 (h) check movement on tilt steering wheels; and
 (i) issue a rejection inspection certificate when:
 (A) adjustable steering wheel cannot be secured in all positions;
 (B) steering column has 3/4 inch or more movement at the center of the steering wheel when it is in locked in position; or
 (C) steering wheel and column is on the right side of the vehicle that is not OEM or the owner does not possess a valid waiver from the safety inspection office;
 (i) check the idler arms and tie rod ends for looseness in excess of OEM specifications; and
 (i) advise the customer when tie rod grease seals are cut, torn, or otherwise damaged to the extent that lubricant will not be retained; or
 (ii) issue a rejection inspection certificate when:
 (A) there is looseness in the tie rod ends or idler arm in excess of OEM specifications; or
 (B) the tie rod is bent, causing the vehicle to be out of alignment;
 (j) conduct a thorough inspection of the complete rack and pinion system; and
 (i) issue a rejection inspection certificate when:
 (A) there is any looseness in excess of OEM specifications;
 (B) there is any looseness in the tie rod ends in excess of OEM specifications; or
 (c) there is a dripping leak;
 (k) check the steering gear box for proper function; and
 (i) advise when the gearbox on a vehicle with manual steering has a dripping leak; or
 (ii) issue a rejection inspection certificate when:
 (A) there is looseness at the frame or mounting;
 (B) there are any cracks;
 (C) any mounting brackets are cracked;
 (D) any fasteners are missing;
 (E) there is a dripping leak; or
 (F) any welded repair is present;
 (l) check the pitman arm; and
 (i) issue a rejection inspection certificate when:
 (A) the gearbox output shaft has movement inside the pitman arm; or
 (B) any welded repair is present;
 (m) check all wheel bearings for looseness; and
 (i) issue a rejection inspection certificate when any bearing has movement of more than 1/8 inch when measured at the outer circumference of the tire; and
 (n) check all the steering components and axle nuts for required cotter pins; and
 (i) issue a rejection inspection certificate when any cotter pins are missing or ineffective.

R714-160-10. Suspension.

(1) When inspecting the vehicle's suspension, the inspector shall:
 (a) support vehicle with the ball joints loaded and wheels straight ahead, wipe the grease fitting and check to ensure the surface is free of dirt and grease and determine if checking surface extends beyond the surface of the ball joint cover; and
 (i) advise the customer when any ball joint seal is cut, torn, or otherwise damaged to the extent it will not retain lubricant;

or
 (ii) issue a rejection inspection certificate when:
 (A) a ball joint wear indicator is flush or inside the cover surface; or
 (B) ball joint movement is in excess of manufacturer's specifications;
 (b) if the vehicle does not have a wear indicating ball joint, unload the ball joints by raising the vehicle and checking the ball joint seals; and
 (i) advise the customer when any ball joint seals is cut, torn, or otherwise damaged to the extent that it will not retain lubricant; or
 (ii) issue a rejection inspection certificate when the ball joint movement is in excess of manufacturer's specifications;
 (c) position a pry bar under the front tire and with a lifting motion, sufficient to overcome the weight of the wheel assembly only, and move the wheel up and down; and
 (i) issue a rejection inspection certificate when the ball joint movement is in excess of manufacturer's specifications;
 (d) grasp the tire and wheel assembly at the top and bottom and move the assembly in and out to detect looseness; and
 (i) issue a rejection inspection certificate when movement is in excess of manufacturer's specifications;
 (e) visually inspect for broken or damaged leaf springs; and
 (i) issue a rejection inspection certificate when:
 (A) springs are missing, cracked, broken, disconnected, or cut; or
 (B) springs are sagging and allow the body to come in contact with the tires;
 (f) check the spring shackles; and
 (i) issue a rejection inspection certificate when:
 (A) the shackles are damaged, loose, or have been modified and do not meet OEM specifications; or
 (B) the shackles do not otherwise meet OEM specifications;
 (g) check the U-bolts; and
 (i) issue a rejection inspection certificate when the U-bolts are damaged, loose, or the bolts are not at least flush with the nut;
 (h) check the coil springs; and
 (i) issue a rejection inspection certificate when:
 (A) springs are broken or not properly attached; or
 (B) springs have been heated, cut, are missing, or altered from OEM specifications;
 (i) visually inspect the sway bars, torsion bars, and tracking components for damage; and
 (i) issue a rejection inspection certificate when:
 (A) any sway bar, torsion bar, or any tracking component is loose, cracked, bent, or disconnected; or
 (B) bushings are missing, worn, or distorted so that looseness is present;
 (j) check the control arms for cracks, bends or breakage; and
 (i) issue a rejection inspection certificate when the upper or lower control arms are bent, cracked, welded, or otherwise do not meet OEM specifications;
 (k) check the bushings for wear or distortion; and
 (i) issue a rejection inspection certificate when the bushings are missing, worn, or distorted so that looseness is present;
 (l) check the spring mounted strut assembly, which must be inspected very closely for leakage, shaft binding, and poor damping; and
 (i) advise the customer when the struts have poor damping or leakage; or
 (ii) issue a rejection inspection certificate when:
 (A) there is any wear in the upper mount assembly;

(B) there is any horizontal or vertical movement in the lower shaft mounting area; or

(C) a shaft is bent or binding;

(m) visually inspect shock absorbers for looseness of mounting brackets and bolts; and

(i) advise the customer when the shocks have poor damping or leakage; or

(ii) issue a rejection inspection certificate when:

(A) shock absorbers are missing or disconnected;

(B) Mounting brackets, bolts, or bushings are loose, broken, or missing; or

(C) a shock is bent or binding;

(n) check the CV Axle and axle boots; and

(i) advise the customer when the CV boots are cracked or torn; or

(ii) issue a rejection inspection certificate when a CV joint makes popping or clicking noise while turning during test drive; and

(o) check the U-joint for wear; and

(i) advise the customer when wear is found in the U-joint; or

(ii) issue a rejection inspection certificate when the U-joint, driveline, or supporting hardware is worn or damaged to the extent that component separation is imminent.

R714-160-11. Altered Vehicles.

(1) When inspecting lowered vehicles, the inspector shall:

(a) ensure that all replacement parts and equipment are equal to or greater in strength and durability as OEM parts; and

(i) advise the customer when fenders or fender extenders do not cover full width of a tire; or

(ii) issue a rejection inspection certificate when:

(A) any part of the vehicle, other than tires, rims, or mudflaps, are less than three inches above the ground or contact the ground;

(B) the fuel tank is exposed to damage without a skid plate;

(C) exhaust system brackets are not secure;

(D) wheels or tires make contact with the body or other vehicle component;

(E) tire tread is not fully covered by existing fenders or fender extenders;

(F) braking, steering, or suspension is modified, disconnected, or changed in any manner that may impair the safe operation of the vehicle;

(G) main springs or shocks have been removed to accommodate a hydraulic or air suspension system;

(H) headlamps are less than 22 inches from the ground when measured from the ground to the center of the low beam bulb;

(I) any light does not meet mounting height specifications as outlined in the Federal Motor Vehicle Safety Standards; or

(J) chassis or suspension components have been altered or changed from OEM that reduces the vehicle stability and safety integrity.

(2) When inspecting lifted vehicles, the inspector shall:

(a) check the braking and steering system components; and

(i) issue a rejection inspection certificate when the braking or steering systems have been altered, modified, disconnected, or changed in any manner that may impair the safe operation of the vehicle;

(b) check vehicle lift by frame height measuring from the ground to the bottom of the frame on the left side of the vehicle under the driver's seat. If the door certification plate has been removed, the vehicle shall be considered to be 4,500 pounds; and

(i) issue a rejection inspection certificate when:

(A) the frame height is greater than 24 inches on a vehicle with a GVWR less than 4,500 pounds;

(B) the frame height is greater than 26 inches on a vehicle with a GVWR of 4,500 pounds and less than 7,500 pounds; or

(C) the frame height is greater than 28 inches on a vehicle with a GVWR of 7,500 pounds or more;

(c) check the body lifts above the frame; and

(i) issue a rejection inspection certificate when the lowest part of the body floor is raised more than 3 inches above the top of the frame;

(d) check the vehicle for front and rear axle blocks; and

(i) issue a rejection inspection certificate when:

(A) axle blocks have been added to the front axle;

(B) there are stacked blocks on the rear axle, which includes two blocks that have been welded together; or

(C) there are stacked frames;

(e) check vehicle tire width and wheel track; and

(i) advise the customer when a fender or fender extender does not cover the full width of a tire; or

(ii) issue a rejection inspection certificate when:

(A) the tire tread protrudes beyond the original fender or fender extender; or

(B) spacers are used;

(f) check the mudflaps if the vehicle has been altered, which includes the addition of larger tires and suspension lift kits; and

(i) advise the customer when:

(A) fenders do not cover the top 50% of the tire when required;

(B) mudflaps are not present on the rear wheels of a vehicle that has been altered from its original OEM specifications; or

(C) rear mudflaps are not directly aligned with the tire and do not cover the full width of the rear tires and have a ground clearance of not more than 50% of the diameter of a rear-axle wheel, under any conditions of loading the vehicle;

(g) check lights for proper height requirements; and

(i) issue a rejection inspection certificate when any light does not meet mounting height specifications as outlined in the Federal Motor Vehicle Safety Standards; and

(h) check fuel tank; and

(i) issue a rejection inspection certificate when the fuel tank is exposed with no impact protection.

R714-160-12. Brakes.

(1) Safety inspection stations are not required to use a computerized brake testing device as a mandatory piece of inspection equipment.

(2) When using a plate brake tester, Safety inspection stations and inspectors shall:

(a) follow the equipment manufacturer procedures for testing;

(b) be certified by the equipment manufacturer or an authorized agent of the division;

(c) renew the inspector certification every three years;

(d) display the inspector certification card for the equipment being used in a prominent location;

(e) display the computerized brake testing equipment certification in a prominent location;

(f) ensure the manufacturer has certified the equipment annually;

(g) pull two wheels upon the failure of the plate brake test to check brake components; and

(i) issue a rejection inspection certificate on vehicles failing the plate brake test, even if the vehicle has adequate pad and or shoe thickness;

(h) complete a visual two-wheel inspection of brake components when requested by a customer; and

(i) display at the station a sign in a conspicuous location with the following components:

(i) the sign must be 14 x 24 inches;

(ii) lettering shall be one inch in vertical height and not less than one quarter of an inch in width; and

(iii) the sign must contain a statement with the Station name and station number followed by the quotation "only uses a computerized plate brake tester to inspect the braking system efficiency of a vehicle for a safety inspection. This test does not measure brake lining thickness or condition of the drum / rotor; however, at the customer's request, we will pull two wheels for a visual check of the braking system (per Utah Safety Inspection requirements)".

(j) If the vehicle failed on a plate brake tester, then it must pass safety inspection on a plate brake tester.

(3) When conducting a visual inspection of a vehicle's brake system, the inspector shall:

(a) remove at least one front and one rear wheel for a brake inspection on all vehicles less than 10,000 pounds GVWR;

(i) vehicles over 10,000 pounds GVWR are not required to have wheels pulled if the vehicle is equipped with inspection ports/slots; and

(b) inspect the brake drum, linings, pads, discs, calipers, and the condition of all mechanical components;

(i) visual inspection through the wheel openings is not an approved inspection procedure; and

(ii) adjustment slots are not adequate for inspecting brakes or if the vehicle has open brake drums.

(4) When inspecting the hydraulic brake system of a vehicle, the inspector shall:

(a) test the pedal reserve according to the manufacturer's specifications; and

(i) issue a rejection inspection certificate when there is less than 20% of the total available pedal travel when the brakes are fully applied;

(b) check the wheel cylinders for leakage; and

(i) issue a rejection inspection certificate when any wheel cylinders leak;

(c) inspect hydraulic hoses and tubes for exposed fabric cord, flattened, restricted, or unsecured lines; and

(i) issue a rejection inspection certificate when hoses or tubing are cracked, leaking, or show exposed fabric cord, flattened, restricted, or are unsecured; or

(ii) brake hoses are not DOT approved or have been altered; and

(d) inspect master cylinder for leakage and fluid level; and

(i) issue a rejection inspection certificate when:

(A) master cylinder leaks or fails to operate properly;

(B) master cylinder is below the add line or less than 3/4 full, whichever is less; or

(C) master cylinder gasket is damaged.

(5) When inspecting the dual hydraulic circuits of a vehicle, the inspector shall:

(a) check any vehicles equipped with a brake warning light and test for operation of light; and

(i) issue a rejection inspection certificate when:

(A) a warning light remains illuminated or comes on when brake pedal is depressed; or

(B) a warning light does not operate when required.

(6) When inspecting brakes with vacuum assist of a vehicle, the inspector shall:

(a) check the condition of vacuum system for collapsed, broken, badly chafed, improperly supported tubes, and loose or broken hose clamps; and

(i) issue a rejection inspection certificate when:

(A) hoses, tubes, or booster are leaking;

(B) the system is collapsed, broken, badly chafed, showing metal or fabric cord;

(C) the system is improperly supported or loose; or

(D) hoses or tubes are exposed to damage from excessive heat, debris, or rubbing; and

(b) determine if the system is operating by turning off

engine and depressing the brake pedal several times to deplete all vacuum in the system, and then starting the engine while maintaining pedal force and observe if the pedal falls slightly when the engine starts; and

(i) issue a rejection inspection certificate when the service brake pedal does not fall slightly as engine is started and while pressure is maintained on pedal.

(7) When inspecting brakes with a hydraulic booster of a vehicle, the inspector shall:

(a) check the integrated hydraulic booster; and

(i) issue a rejection inspection certificate when:

(A) the brake pedal does not move down slightly as the pump builds pressure; or

(B) the brake warning lights remain on longer than 60 seconds; and

(b) check the braking system, while fully charged, for leaks and proper fluid levels; and

(i) issue a rejection inspection certificate when:

(A) fluid reservoir is below the add line or less than 3/4 full, whichever is less;

(B) braking system has broken, kinked or restricted fluid lines or hoses; or

(C) braking system has any leakage of fluid at the pump or brake booster, or on any of the lines or hoses in the system.

(8) When inspecting brake drums of a vehicle, the inspector shall:

(a) check the condition of the drum friction surface for damage, contamination, and substantial cracks; and

(i) issue a rejection inspection certificate when:

(A) there are substantial cracks, other than short hairline heat cracks, on the friction surface extending to the open edge of the drum; or

(B) any part of the brake drum missing or is in danger of falling away;

(ii) a vehicle may pass inspection with short hairline heat cracks;

(b) check for cracks on the outside of drum; and

(i) issue a rejection inspection certificate when a brake drum has external cracks, other than short hairline cracks;

(c) check for mechanical damage; and

(i) issue a rejection inspection certificate when there is evidence of mechanical damage other than wear;

(d) check for leaks at all grease or oil seals; and

(i) issue a rejection inspection certificate when the leakage of oil, grease, or brake fluid contaminates the brake components; and

(e) check the drum diameter; and

(i) issue a rejection inspection certificate when the drum is turned or worn beyond the manufacturer's specifications.

(9) When inspecting brake rotors of a vehicle, the inspector shall:

(a) check the condition of the rotor friction surface for substantial cracks; and

(i) issue a rejection inspection certificate when:

(A) there are substantial cracks, other than short hairline cracks, on the friction surface extending to open edge of rotor;

(B) the friction surface is contaminated with oil or grease;

or

(C) any part of the brake rotor is missing or is in danger of falling away; and

(b) check the rotor thickness; and

(i) issue a rejection inspection certificate when the rotor thickness is less than the manufacturer's specifications.

(10) When inspecting the bonded lining and pads of a vehicle, the inspector shall:

(a) check the primary and secondary lining thickness at the thinnest point; and

(i) advise the customer when the lining thickness is worn to 2/32 inch; or

(ii) issue a rejection inspection certificate when the lining thickness is worn to less than 2/32 inch.

(11) When inspecting the riveted lining and pads of a vehicle, the inspector shall:

(a) check for loose or missing rivets; and

(i) issue a rejection inspection certificate when:

(A) any rivets are loose or missing; or

(B) the lining thickness is worn to less than 2/32 inch; and

(b) check the primary and secondary lining thickness above the rivet head by measuring at the thinnest point with the calipers removed; and

(i) issue a rejection inspection certificate when the lining thickness is less than 2/32 inch above any rivet head.

(12) When inspecting the brake linings of a vehicle, the inspector shall:

(a) check for broken or cracked linings; and

(i) issue a rejection inspection certificate when the linings are broken, cracked, or not firmly and completely attached to shoe;

(b) check for contamination of the friction surface; and

(i) issue a rejection inspection certificate when the friction surface is contaminated with oil, grease, or brake fluid;

(ii) once a brake lining has been contaminated, replacement is required; and

(c) check for uneven lining wear; and

(i) advise the customer when the lining is uneven or grooved.

(13) When inspecting the mechanical brake components of a vehicle, the inspector shall:

(a) check for missing or defective mechanical components; and

(i) issue a rejection inspection certificate when mechanical parts are missing, incompatible, broken, or badly worn;

(b) check for frozen calipers, rusted or inoperative components, missing spring clips, and defective grease retainers; and

(i) issue a rejection inspection certificate when:

(A) any mechanical parts are frozen, inoperative, missing, or defective; or

(B) the backing plate or brake shoe is damaged, restricting free movement of the brake shoe; and

(c) check for restriction of shoe movement at the backing plate and for binding between the brake shoe and anchor pins; and

(i) issue a rejection inspection certificate when the shoes and anchor pins are improperly positioned or misaligned.

(14) When inspecting the parking brake of a vehicle, the inspector shall:

(a) check holding ability; and

(i) issue a rejection inspection certificate when the parking brake does not operate or fails to hold the vehicle; and

(b) check the ratchet or the locking device; and

(i) issue a rejection inspection certificate when the ratchet, pawl or other locking device fails to hold the brake in an applied position.

(15) When inspecting the Anti-Lock Brakes (ABS) of a vehicle, the inspector shall:

(a) check the ABS warning light and system for proper operation; and

(i) advise the customer when:

(A) the ABS light fails to light, fails to shut off after 60 seconds, or when 5 rapid beeps are heard when ignition switch is turned to the on position; or

(B) ABS components are broken, missing, or disconnected.

R714-160-13. Lighting.

(1) When inspecting the headlamps of a vehicle, the inspector shall:

(a) check headlamps for proper mounting; and

(i) issue a rejection inspection certificate when:

(A) mounting brackets are loose, missing, or damaged in any way so that a headlamp cannot be properly and securely mounted; or

(B) a vehicle headlamp is lower than 22 inches or exceed 54 inches, measured from the ground to the center of the headlamp;

(b) check headlamp for proper aim and lighting using a mechanical headlamp aiming device or by checking light at 10 feet measured from the front of the vehicle to a wall; and

(i) issue a rejection inspection certificate when:

(A) headlamp aim deviates more than four inches in any direction;

(B) a headlamp is less than 22 inches or greater than 54 inches measured from the ground to the center of the low beam;

(C) a headlamp fails to light properly;

(D) a headlamp projects other than white light; or

(E) a headlamp does not comply with federal standards; and

(c) check headlamps for holes, breakage, and non-factory colored covers or non-transparent covers; and

(i) advise the customer when a headlamp has minor holes or cracks in the headlight lens; or

(ii) issue a rejection inspection certificate when:

(A) a headlamp covering not approved by the department is placed on or in front of any headlamp, or a factory-installed light or cover is faded or painted to the point that components inside are not distinguishable;

(B) a headlamp cover is broken or missing; or

(C) a headlamp cover is tinted, colored, or painted other than clear; and

(d) check the dimmer switch for proper functioning and ensure that both high and low beams function; and

(i) issue a rejection inspection certificate when the dimmer switch fails to work properly.

(2) When inspecting the backup lights of a vehicle, the inspector shall:

(a) check the backup lights for proper functioning; and

(i) advise the customer when the backup lights are missing or fail to light; or

(ii) issue a rejection inspection certificate when the backup lights remain illuminated when transmission is not in reverse.

(3) When inspecting the hazard warning lamps of a vehicle, the inspector shall:

(a) check the hazard warning lamps for proper functioning; and

(i) issue a rejection inspection certificate when:

(A) the hazard warning lamps fail to function properly; or

(B) there is any tinted cover over the lens.

(4) When inspecting a vehicle's interior lamps, the inspector shall:

(a) check the interior lamps for proper functioning; and

(i) issue a rejection inspection certificate when turn signal indicators, high beam indicator, or brake warning indicator fail to function.

(5) When inspecting the vehicle's parking lamps, the inspector shall:

(a) check the parking lamps for proper functioning; and

(i) issue a rejection inspection certificate when:

(A) parking lamps fail to function properly or display an unapproved color; or

(B) any tinted cover is over the lens.

(6) When inspecting the side marker lamps of a vehicle, the inspector shall:

(a) check the side marker lamps for proper functioning and color; and

(i) issue a rejection inspection certificate when:

(A) side marker lamps are not functioning properly;

(B) side marker lamps or side reflectors are not the correct color, which must be yellow or amber on the front of the vehicle and red on the rear of the vehicle; or

(C) there is any tinted cover over the lens.

(7) When inspecting the tail lamp assembly of a vehicle, the inspector shall:

(a) check the tail lamp assembly for proper lens and required reflex reflectors; and

(i) issue a rejection inspection certificate when:

(A) rear lenses do not produce red light, are painted, or covered by any tinted cover;

(B) lenses are missing required reflectors; or

(C) there is tinting or material that obstructs the original design of the light;

(b) check lens covers for breakage; and

(i) issue a rejection inspection certificate when:

(A) a tail lamp lens is broken to the extent that any white light shows through the broken area; or

(B) there is a tinted cover or temporary patch;

(c) check for the proper operation; and

(i) issue a rejection inspection certificate when tail lamps fail to light properly;

(d) check for proper mounting; and

(i) issue a rejection inspection certificate when tail lamps are not securely mounted; and

(e) check for visibility; and

(i) issue a rejection inspection certificate when lamps are not visible from a distance of 500 feet in normal light.

(8) When inspecting the stop lamps of a vehicle, the inspector shall:

(a) check the stop lamps for proper color; and

(i) issue a rejection inspection certificate when:

(A) a stop lamp lens does not produce a steady burning red light;

(B) a stop lamp is painted or tinted;

(C) a stop lamp has any cover that partially or entirely obstructs the original design of the light; or

(D) a stop lamp has a blue dot tail light;

(b) check the stop lamps for breakage; and

(i) issue a rejection inspection certificate when:

(A) a stop lamp lens is broken to the extent that white light is visible to the rear; or

(B) there is a tinted cover or a temporary patch;

(c) check for the correct operation of stop lamps; and

(i) issue a rejection inspection certificate when:

(A) a stop lamp do not operate when required; or

(B) a stop lamp fails to light properly;

(d) check for proper stop lamp mounting; and

(i) issue a rejection inspection certificate when a stop lamps are not securely mounted;

(e) check the visibility of stop lamps; and

(i) issue a rejection inspection certificate when:

(A) a stop lamp is not visible from a distance of 500 feet in normal light;

(B) LED lights have less than 50% of the diodes illuminated;

(C) a stop lamp lens does not produce a steady burning red light;

(D) a stop lamp is painted or tinted; or

(E) a stop lamp has any cover that partially or entirely obstructs the original design of the light; and

(f) check center high-mounted stop lamps, if applicable; and

(i) issue a rejection inspection certificate when:

(A) a center high-mounted stop lamp is not present when required;

(B) a center high-mounted lamp fails to light;

(C) any aftermarket tint has been applied over the center high-mounted stop lamp;

(D) LED lights have less than 50% of diodes illuminated; or

(E) a lens does not produce a steady burning red light, except as provided in Section 41-6a-1604;

(F) a lens is painted; or

(G) a lens has a cover that partially or entirely obstructs the original design of the light;

(ii) center high-mounted stop lamps are required on all passenger vehicles manufactured after September 1985;

(iii) trucks whose overall width is less than 80 inches and GVWR is 10,000 pounds or less, manufactured after September 1, 1993, must be equipped with a high-mounted stop lamp.

(iv) trucks greater than 80 inches in overall width and 10,000 pounds GVWR do not require a high-mounted stop lamp;

(v) a truck equipped with a camper shell at the time of the inspection that covers the center high-mounted stop lamp is acceptable; and

(vi) a truck shell that was manufactured with a center high-mounted stop lamp is required to function if the truck is equipped with a high-mounted stop lamp.

(9) When inspecting the turn signal operation of a vehicle, the inspector shall:

(a) check the turn signals on all vehicles manufactured in 1956 and later; and

(i) advise the customer when one of the two bulbs fails to illuminate in a two-bulb system; or

(ii) issue a rejection inspection certificate when:

(A) the vehicle is not equipped with proper signals; or

(B) a turn signal fails to function;

(b) check the switch for proper functioning; and

(i) advise the customer when the switch does not cancel automatically for vehicles manufactured in 1956 or later; or

(ii) issue a rejection inspection certificate when the turn signal lever needs to be held in the on position;

(c) check the condition of the lens; and

(i) issue a rejection inspection certificate when:

(A) a turn signal lens is tinted, painted, broken or missing;

(B) any tinted cover or foreign material is over the lens; or

(C) there is a temporary patch on the cover or lens;

(d) check for proper mounting; and

(i) issue a rejection inspection certificate when the turn signals are not securely mounted;

(e) check for the proper color of lens and bulbs; and

(i) issue a rejection inspection certificate when:

(A) turn signal colors are not red, yellow, or amber in the rear of the vehicle;

(B) turn signal color is not amber in the front of the vehicle; or

(C) a turn signal lens or bulb is painted; and

(f) check for visibility of lens; and

(i) issue a rejection inspection certificate when turn signals are not visible from a distance of 100 feet in normal light.

R714-160-14. Electrical System.

(1) When inspecting the electrical system of a vehicle, the inspector shall:

(a) check the horn; and

(i) advise the customer when the horn is not securely fastened; or

(ii) issue a rejection inspection certificate when the horn does not function properly or is not audible under normal conditions at a distance of at least 200 feet;

(b) check the electrical switches and wiring; and

(i) advise the customer when:

(A) electrical switches fail to function as designed for OEM required equipment;

(B) connections show signs of corrosion; or

(C) permanent connection wires are not soldered and

insulated; or

(ii) issue a rejection inspection certificate when wiring insulation is worn or rubbed bare;

(c) check the automatic or manual transmission safety starting switch; and

(i) issue a rejection inspection certificate when:

(A) the starter operates in any gear other than "P" or "N" for an automatic transmission; or

(B) the vehicle starter operates without the clutch depressed for a manual transmission, when equipped with a neutral safety switch; and

(d) check for battery securement; and

(i) issue a rejection inspection certificate when a battery is not properly secured.

R714-160-15. Vehicle Windows.

(1) When inspecting the windshield of a vehicle, the inspector shall:

(a) check the windshield for appropriate "AS" certification number; and

(i) issue a rejection inspection certificate when:

(A) the windshield is missing; or

(B) the windshield does not have AS-1, AS-10, or AS-14 markings;

(b) visually inspect the windshield for scratches, cloudiness, etching, or other marks; and

(i) issue a rejection inspection certificate when:

(A) the windshield glass is scratched, discolored, clouded, or pitted to a level that obscures vision;

(B) the windshield cloudiness is more than one inch from each side edge, more than four inches down from the top edge, or more than three inches up from the bottom edge; or

(C) the windshield has decorative etching that is not OEM; and

(c) check the windshield for damage, unauthorized tinting, signs, or other non-transparent materials; and

(i) issue a rejection inspection certificate when:

(A) the windshield has outright breakage, which includes shattered glass on either the inside or outside surface, or any broken glass leaving sharp or jagged edges;

(B) any crack intersects with another crack within the acute area;

(C) any damage within the acute area that cannot be covered by a disc 3/4 inch in diameter;

(D) any damage in the acute area that is within 3 inches of any other damage in the acute area;

(E) windshield allows less than 70% light transmittance or any sign, poster, or other non-transparent material is present below the AS-1 line or four inches down from the top of the windshield, whichever is lower; or

(F) any transparent material becomes obscured or impairs the drivers vision and is more than one inch in from each side edge, more than four inches down from the top edge, or more than three inches up from the bottom edge.

(d) Non-transparent material is allowed in the lower left-hand corner of the windshield provided it does not extend more than 3 inches to the right of the left edge or more than 4 inches above the bottom edge of the windshield in accordance with Section 41-6a-1635.

(2) When inspecting the windshield defroster of a vehicle, the inspector shall:

(a) verify a vehicle manufactured after January 1, 1969 is equipped with a windshield defroster system; and

(b) if applicable, turn on windshield defroster fan switch and inspect for heated air blowing over the inside of the windshield; and

(i) issue a rejection inspection certificate when:

(A) a vehicle manufactured after January 1, 1969 is not equipped with a windshield defroster system; or

(B) the defroster fan fails to function or the fan functions but a stream of heated air cannot be felt blowing against the proper area of the windshield.

(3) When inspecting the windshield wipers of a vehicle, the inspector shall:

(a) check for satisfactory operation of the windshield wipers, if vacuum operated, the engine must be idling; and

(i) advise the customer when wipers fail to return to the park position; or

(ii) issue a rejection inspection certificate when:

(A) any wiper fails to function properly, other than streaking from wiper blades;

(B) a vehicle originally equipped with two windshield wipers has been modified to use one wiper; or

(C) a vehicle manufactured after January 1968 does not have a two or more speed system;

(b) check the wiper blades for damaged, torn, or hardened rubber elements; and

(i) issue a rejection inspection certificate when the wiper blades show signs of physical breakdown of the rubber wiping element;

(c) check for damaged metal parts of wiper blades or arms; and

(i) issue a rejection inspection certificate when the wiper blades or arms are missing or damaged to the extent that they do not function properly; and

(d) check for proper contact of blades with windshield; and

(i) issue a rejection inspection certificate when a wiper blade fails to contact the windshield firmly.

(4) When inspecting the windshield washers of a vehicle, the inspector shall:

(a) verify a vehicle manufactured after May 1966 is equipped with a windshield washer system; and

(b) if applicable, check for proper operation of hand or foot control and that an effective amount of fluid is delivered to the windshield; and

(i) issue a rejection inspection certificate when:

(A) a vehicle manufactured after May 1966 is not equipped with a windshield washer system; or

(B) the windshield washer system fails to function properly, including cracked hoses, broken hoses, or if the fluid reservoir is unable to hold fluid.

(5) When inspecting the front side windows of a vehicle, the inspector shall:

(a) check the operation of the driver window and front passenger window; and

(i) advise the customer when the driver window cannot be readily opened to permit arm signals; or

(ii) issue a rejection inspection certificate when the driver or front passenger window fails to roll up;

(b) check the driver and front passenger windows for tinting or shading, scratches, discoloration, and cloudiness; and

(i) advise the customer when either the driver or front passenger window is scratched, discolored, or clouded, but the driver's view of the side mirrors is unobscured; or

(ii) issue a rejection inspection certificate when:

(A) there is any tinting or non-transparent material added to the windows to the immediate left or right of the driver's seat that allows less than 43% light transmittance;

(B) the front left and right side windows are scratched, discolored, clouded, or etched with non-OEM markings to a level that obstructs the drivers' view of the side mirrors;

(C) the right side mirror is missing when any window is tinted; or

(D) windows are covered by or treated with a material, which presents a metallic or mirrored appearance when viewed from the outside of the vehicle;

(c) check the driver and front passenger windows for

breakage; and

(i) issue a rejection inspection certificate when any glass is broken, shattered, or jagged; and

(d) check the wind deflectors, or bubbles, when present; and

(i) issue a rejection inspection certificate when a wind deflector on the driver or front passenger window is tinted to allow less than 43% light transmittance, or when deflector and window are both tinted to allow less than 43% light transmittance.

(A) This standard only applies to wind deflectors on the front left and right windows, which block driver visibility to the left and/or right outside mirror.

(6) When inspecting the rear side window of a vehicle, the inspector shall:

(a) check the windows behind the driver and passenger doors for tinting or for material that presents a metallic or mirrored appearance; and

(i) issue a rejection inspection certificate when:

(A) any window is covered by or treated with a material that presents a metallic or mirrored appearance when viewed from the outside of the vehicle;

(B) any glass is broken, shattered, or jagged;

(C) windows do not meet AS standards; or

(D) center high-mounted brake light is covered with aftermarket window tint or is not visible;

(ii) window tint limits do not apply to windows located behind the driver;

(c) check the vehicle for rearview mirrors; and

(i) issue a rejection inspection certificate when:

(A) the vehicle lacks a left rearview mirror that meets OEM standards;

(B) the vehicle has only one review mirror; or

(C) the vehicle lacks a right outside rearview mirror if the vehicle has any amount of tint on its windows.

R714-160-16. Body.

(1) When inspecting the body of a vehicle, the inspector shall:

(a) check the vehicle body for protruding metal parts, moldings, and other body parts that may protrude from vehicle, creating a hazard; and

(i) issue a rejection inspection certificate when metal, molding, or any other body part protrudes from the surface of the vehicle and creates a hazard;

(b) check parts and accessories for proper securement; and

(i) issue a rejection inspection certificate when parts or accessories are not properly secured.

(2) When inspecting bumpers of a vehicle, the inspector shall:

(a) check bumpers to ensure they meet OEM specifications in vertical height, are centered on the vehicle's centerline, connected securely to the vehicle frame, and extend the entire width of the vehicle wheel track; and

(i) issue a rejection inspection certificate when:

(A) bumpers are not 4.5 inches in vertical height;

(B) bumpers do not extend to the entire width of original body wheel track;

(C) bumpers are missing, improperly attached, broken, or have portions protruding which create a hazard; or

(D) bumpers are not made from a material that is strong enough to effectively transfer impact.

(ii) A pickup truck is required to meet the requirements of this section even though it may be sold or purchased without a rear bumper meeting OEM standards.

(iii) Roll pans are not bumpers and are only acceptable when a material is concealed behind the roll pan that meets the strength, vertical height, and securing requirements of a rear bumper.

(A) The material must extend the width of the wheel track and must meet all of the requirements of a rear bumper.

(3) When inspecting the fenders of a vehicle, the inspector shall:

(a) check for removal or alteration of front and rear fenders; and

(i) advise the customer when any fender has been removed or altered to such extent that it does not cover the entire width and upper 50% of the tire.

(4) When inspecting the seats of a vehicle, the inspector shall:

(a) check seats for proper operation of adjusting mechanism and to see that the seats are securely anchored to the floor; and

(i) issue a rejection inspection certificate when:

(A) seats are not anchored to the floorboard;

(B) the seat adjusting mechanism slips out of set position;

(C) the seat adjusting mechanism does not function properly;

(D) any driver or passenger seat back is broken or disconnected from the base so that it will not support a person's full weight;

(E) seat belts are not installed on vehicles manufactured after July 1, 1966 or are inoperative when present; or

(F) seat belts are cut, torn, frayed, or otherwise damaged; and

(b) check the motorized safety belts for proper function; and

(i) advise the customer when a motorized seat belt does not function as designed; or

(ii) issue a rejection inspection certificate when motorized seat belts fail to lock in the rear position.

(5) When inspecting the air bags of a vehicle, the inspector shall:

(a) check the Air Bag Readiness Light; and

(i) advise the customer when air bag indicator fails to light in the manner prescribed by the manufacturer, continuously flashes, remains illuminated, or if five sets of "beeps" are heard concurrent with indicator failing to light; and

(b) check the air bags; and

(i) issue a rejection inspection certificate when an air bag has been deployed or is not present when originally equipped on the vehicle.

(6) When inspecting the floorboards of a vehicle, the inspector shall:

(a) check the floorboard in both the occupant compartment and trunk for rusted areas or holes that could permit entry of exhaust gases or will not support occupants adequately; and

(i) issue a rejection inspection certificate when:

(A) any area of the floorboard is rusted through sufficiently to cause a hazard to an occupant; or

(B) exhaust gases could enter the occupant compartment or trunk; and

(b) check the space between the floor pan and frame for body lifts; and

(i) issue a rejection inspection certificate when the lowest part of body floor is raised more than three inches above the top of the frame.

(7) When inspecting the doors of a vehicle, the inspector shall:

(a) check the doors and door components for proper operation; and

(i) issue a rejection inspection certificate when:

(A) doors are missing, unless the vehicle manufacturer specially designed the doors to be removed;

(B) door parts are missing, broken, or sagging to the extent that the door cannot be opened and closed properly; or

(C) any interior and exterior door handles are not present or do not function as designed by the manufacturer.

(ii) Shaved door handles with automatic releases are allowed provided that when the engine is running and the vehicle is in drive, the wireless remote cannot activate the door release switch.

(8) When inspecting the hood of a vehicle, the inspector shall:

(a) check all vehicles for hood or engine cover; and

(i) issue a rejection inspection certificate when:

(A) the hood or engine cover is missing; or

(B) the hood is unable to be opened;

(b) check the hood and open it to check the safety catch for proper operation; and

(i) issue a rejection inspection certificate when the secondary or safety catch does not function properly;

(c) check for proper hood operation; and

(i) issue a rejection inspection certificate when the hood latch does not securely hold the hood in its proper fully closed position; and

(d) check for aftermarket hood scoop or air intake; and

(i) issue a rejection inspection certificate when:

(A) a hood scoop, air intake, or any engine component is higher than four inches above the top of the hood; or

(B) moving parts are exposed above the hood.

(9) When inspecting the frame of a vehicle, the inspector shall:

(a) check the frame and ensure that any repairs made to the frame meet OEM specifications; and

(i) issue a rejection inspection certificate when:

(A) there is any broken or cracked frame component;

(B) the frame is rusted through;

(C) the frame has been cut or portions of the frame have been removed, drilled, or bent, affecting the strength or integrity of the frame; or

(D) repairs made to the frame that do not meet OEM specifications.

(10) When inspecting the mounts of a vehicle, the inspector shall:

(a) check all mount components, including motor mounts, transmission mounts, and drive train mounts; and

(i) advise the customer when heat cracks are present; or

(ii) issue a rejection inspection certificate when:

(A) any mount bolts or nuts are broken, loose, or missing;

(B) the rubber cushion is separated from the metal plate of any mount;

(C) there is a split through the rubber cushion;

(D) the engine or transmission is sagging to the point where the mount bottoms out or there is engine misalignment to the point of a drive train component compromise; or

(E) fluid-filled mounts are leaking, leakage must be verified from the mount.

(11) When inspecting the exterior rearview mirrors of a vehicle, the inspector shall:

(a) check exterior mirrors from the driver's position for a clear and reasonably unobstructed view to the rear; and

(i) verify a driver-side mirror that meets OEM standards is equipped on a vehicle manufactured after January 1968, and the vehicle is also equipped with either an interior mirror or a passenger exterior mirror;

(ii) verify a passenger-side mirror is equipped on a vehicle with tinted windows or an obstructed rear view; and

(iii) issue a rejection inspection certificate when:

(A) the required mirrors are not present; or

(B) driver-side mirror does not meet OEM standards;

(b) Verify mirrors are in the correct location and are mounted securely; and

(c) check for cracks, sharp edges, or unnecessary protrusion; and

(i) issue a rejection inspection certificate when:

(A) mirrors are loose enough that the driver's rear vision

could be impaired;

(B) mirrors are cracked, pitted, or clouded to a level that obscures the driver's rear vision;

(C) mirrors will not maintain a set adjustment; or

(D) mirrors do not allow 200 feet of rear visibility.

(12) When inspecting the interior rearview mirror, if an interior rearview mirror is required, the inspector shall:

(a) check the mirror for proper mounting, location, cracks, sharp edges, and ease of adjustment; and

(i) issue a rejection inspection certificate when:

(A) the interior mirror is loosely mounted;

(B) the interior mirror obstructs the drivers' forward vision;

(C) the interior mirror does not provide a clear view of the highway at least 200 feet to rear;

(D) the interior mirror is cracked, broken, has sharp edges, or rear vision is obscured; or

(E) the interior mirror will not maintain a set adjustment.

(13) When inspecting the speedometer of a vehicle, the inspector shall:

(a) check the vehicle to ensure that it is equipped with a properly functioning speedometer; and

(i) advise the customer when the speedometer is not functioning properly.

R714-160-17. Exhaust System.

(1) The inspector shall examine the vehicle's exhaust system and comply with the following requirements:

(a) check the manifold, exhaust or header pipe, mufflers, tail pipes, and the supporting hardware; and

(i) issue a rejection inspection certificate when:

(A) the muffler is missing;

(B) the exhaust system has leaks of any kind on any part of the system, excluding drain holes installed by the manufacturer.

(C) any part of the system is not securely fastened or is secured in a manner that is likely to fail, such as using a rope to secure the tail pipe;

(D) the tail pipes do not extend beyond the outer periphery of the passenger compartment, discharge at any point forward of the passenger compartment, or are severely bent or broken;

(E) the exhaust system passes through any occupant compartment;

(F) a muffler cutout or similar device is installed on the vehicle;

(G) any part of the exhaust system that is located or exposed in a manner that a person will likely be burned or injured; or

(H) any part of the exhaust system is located so that it would likely result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.

R714-160-18. Fuel System.

(1) If the fuel system uses diesel or gasoline, the inspector shall:

(a) check the fuel tank, fuel tank support straps, filler tube, tube clamps, fuel tank vent hoses or tubes, filler housing drain, overflow tube, and fuel filler; and

(i) issue a rejection inspection certificate when:

(A) there is fuel leakage at any point or there are escaping gases detected in the system;

(B) the fuel tank filler cap is missing;

(C) any part of the system is not securely fastened or supported;

(D) there is physical damage to any fuel system component; or

(E) the crossover line is not protected and drops more than two inches below fuel tanks.

(2) If the fuel system uses liquid propane gas, the inspector shall:

- (a) check the fuel tank, fuel tank support straps, filler tube, tube clamps, fuel tank vent hoses or tubes, filler housing drain, overflow tube, fuel filler cap, and conversion kit installations;
 - (b) check for leaks by using the soap test with antifreeze;
 - (c) check that the fuel container is installed in a way to prevent it from jarring loose, slipping, or rotating;
 - (d) check that containers are located to minimize the possibility of damage to the container and its fittings;
 - (e) check that containers located less than 18 inches from the exhaust system, the transmission, or a heat-producing component of the internal combustion engine are shielded by a vehicle frame member or by a noncombustible baffle with an air space on both sides of the frame member or baffle;
 - (f) check that the piping system is installed, supported, and secured in such a manner as to minimize damage due to expansion, contraction, vibration, strains, and wear;
 - (i) protection to the piping system may be achieved by parts of the vehicle furnishing the necessary protection, a fitting guard furnished by the manufacturer of the container, or by other means to provide equivalent protection;
 - (g) check that container valves, appurtenances, and connections are protected to prevent damage from accidental contact with stationary objects or from stones, mud, ice, and from damage from the vehicle's overturn or similar accident;
 - (h) For a tank installed inside a passenger compartment, check that it is installed in an enclosure that is securely mounted to the vehicle, such as a trunk which is gas-tight with respect to the passenger compartment and is vented to the outside of the vehicle;
 - (i) check that manual shutoff valves provide positive closure under service conditions, are equipped with an internal excess-flow check valve designed to close automatically at the rated flows of vapor, stop all flow to and from the container when put in the closed position, and are readily accessible without the use of tools or other equipment. A check valve will not meet this requirement; and
 - (j) issue a rejection inspection certificate when:
 - (i) there is fuel leakage at any point or there are escaping gases detected in the system;
 - (ii) the fuel tank filler cap is missing;
 - (iii) any part of the system is not securely fastened, supported, or the tank valve is not shielded;
 - (iv) there is physical damage, such as excessive denting, corrosion, bulging, or gouging to any fuel system component;
 - (v) the fuel lines have any corrosion;
 - (vi) welding is present, with the exception of being on saddle plates, lugs, pads or brackets that are attached to the container by the container manufacturer;
 - (vii) excessive surface rust is present on the tank or tank paint coating is in poor condition;
 - (viii) there is any installation hazard present that may cause a potential hazard during a collision;
 - (ix) a container is mounted directly on the roof, or ahead of the front axle or beyond the rear bumper of a vehicle;
 - (x) a container or its appurtenance protrudes beyond the sides or top of the vehicle;
 - (xi) the vehicle does not have a weather-resistant, diamond shaped label located on the right rear of the vehicle identifying the vehicle as a 'PROPANE' fueled vehicle;
 - (xii) a data plate or saddle plate is not present or is not legible on a propane tank;
 - (xiii) any aftermarket data plates are welded on the tank; or
 - (xiv) a check valve is used for a manual shutoff valve.
- (3) American Society of Mechanical Engineers "ASME" containers are installed permanently to vehicles and are not subject to the DOT inspection requirements.
- (4) All liquefied propane gas containers fabricated to

earlier editions of regulations, rules, or codes listed in NFPA 5.2.1.1 and of the Interstate Commerce Commission "ICC" Rules for Construction of Unified Pressure Vessels, prior to April 1, 1967, shall be permitted to continue to be used in accordance with Section 1.4 of NFPA.

(5) Containers that have been involved in a fire and show no distortion shall be re-qualified by a manufacturer of that type of cylinder or by a repair facility approved by DOT, before being used or reinstalled.

(6) When inspecting a fuel system that uses either CNG or liquefied natural gas, the inspector shall:

- (a) check the fuel tank, fuel tank support straps, filler tube, tube clamps, fuel tank vent hoses or tubes, filler housing drain, overflow tube, fuel filler cap, and conversion kit installations;
- (b) check the tank to verify it is protected from physical damage using the vehicle structure, valve protectors or a suitable plastic or metal shield;
- (c) check that fuel tank shields do not have direct contact with fuel tanks and prevent trapping of materials that could damage the tanks or its coatings;
- (d) for fuel tanks installed above, below, or within the passenger compartment, check to verify connections are external or sealed and vented from the compartment;
- (e) for fuel tanks installed within the passenger compartment, check to verify tanks are vented to the outside of the vehicle with a boot or heavy plastic bag and shall not exit into a wheel well;
- (f) check tanks and fuel lines to verify mounting and bracing is away from the exhaust system and supported to minimize vibration and to protect against damage, corrosion, or breakage;
- (g) check for identification with a weather-resistant, diamond-shaped label located on an exterior vertical surface or near-vertical surface on the lower right rear of the vehicle, excluding the bumper, inboard from any other markings;
 - (i) the label shall be a minimum of 4.72 inches long by 3.27 inches high;
 - (h) check that when a manual valve is used, the valve location is accessible, indicated with the words "MANUAL SHUTOFF VALVE";
 - (i) check that the vehicle bears in the engine compartment a label readily visible identification as a CNG-fueled vehicle, system service pressure, installer's name or company, container retest dates or expiration date, and the total container water volume in gallons;
 - (j) check for a label located at the fueling connection receptacle with identification as a CNG-fueled vehicle, system working pressure, and container retest dates or expiration date;
 - (k) check that CNG fuel containers are permanently labeled;
 - (i) disassembly of the tanks protective shield is not required to verify the label on the tank;
 - (ii) it is the vehicle owner's responsibility to provide documentation for a current CNG tank Inspection from a CNG certified inspector; and
 - (iii) the documentation must identify the vehicle and list the CNG tank certification number; and
 - (l) visually inspect CNG fuel containers for damage and deterioration; and
 - (i) issue a rejection inspection certificate when:
 - (A) there is fuel leakage at any point or escaping gases are detected in the system, odor will be present;
 - (B) the fuel tank filler cap or cover is missing;
 - (C) any part of the system is not securely fastened, supported, or shielded to prevent damage from road hazards, slippage, loosening, or rotations;
 - (D) the fuel tank is exposed or unprotected;
 - (E) tanks that are installed under a vehicle are mounted ahead of the front axle or behind the point of attachment of the

rear bumper;

(F) there is any physical damage to a fuel system component;

(G) there is any installation hazard present that may cause a potential hazard during a collision;

(H) any part of the fuel tank or its appurtenances protrudes beyond the sides or top of any vehicle where the tanks can be struck or punctured;

(I) the vehicle is not labeled as described in Subsection C of this section or in accordance with National Fire Protection Association Pamphlet 52; or

(J) a CNG fuel container is not current with its certification in accordance with Federal Motor Vehicle Safety Standards.

R714-160-19. Trailers.

(1) Light duty trailers or any trailer, regardless of GVWR, used in the capacity of a commercial motor vehicle as defined in Federal Motor Carrier Safety Regulations shall be inspected per procedures found in Rule R714-162, Equipment Standards for Heavy Truck, Trailer and Bus Safety Inspections.

(a) These inspections shall only be performed by personnel certified in Tractor/Trailer/Bus categories.

R714-160-20. Off-Highway Vehicles.

(1) The inspector shall check vehicles that have been modified for off-road use for compliance with the safety inspection rules, Utah state law, and federal motor vehicle safety standards:

(a) the inspector shall issue a rejection inspection certificate when:

(i) a vehicle does not meet all inspection requirements for a regular passenger vehicle;

(ii) a vehicle does not provide an enclosure or cockpit for the driver and occupants; or

(iii) the vehicle has a Baja or T-bar style bumper.

R714-160-21. Vintage Vehicles, Custom Vehicles, and Replica Vehicles.

(1) A vintage vehicle does not require a safety inspection pursuant to Subsection 53-8-205(1)(b)(iii).

(2) The following are minimum safety equipment requirements for a custom vehicle:

(a) hydraulic service brakes on all wheels with current vehicle brake and stopping standards;

(b) parking brake operating on at least two wheels on the same axle;

(c) seat belts for all passengers and driver;

(d) sealed beam or halogen headlamps;

(e) brake Lamps;

(f) turn signal lamps and switch;

(g) AS-1 safety glass or Lexan; and

(h) electric or vacuum windshield wiper in front of the drivers view.

(3) The inspector shall issue a rejection inspection certificate when any of the above requirements are not met.

(4) Exhaust systems may discharge along the side of the vehicle provided they discharge at a point behind the rear edge of the door and exhaust is directed away from the vehicle.

(5) The vehicle identification for a custom vehicle shall be a number stamped on the frame of the vehicle.

(a) If no such numbers exist, then the requirements as established pursuant to Rule R873-22M-15 must be followed in order to pass inspection.

(6) All safety equipment of a replica vehicle shall comply with the requirements in Subsection 41-6a-1507(3).

R714-160-22. Low-Speed Vehicles.

(1) A low-speed vehicle shall meet the requirements found in Section 41-6a-1508.

(a) The inspector shall issue a rejection inspection certificate when any of the requirements in Section 41-6a-1508 or 49 C.F.R. 571.500 are not met.

R714-160-23. Reconstructed/Salvaged Motor Vehicles.

(1) Safety inspection for a salvaged vehicle is required as stated in Subsection 53-8-205(3).

(2) The inspector shall check all components and follow the requirements in this Rule.

(a) The inspector shall issue a rejection inspection certificate when any components and repairs are not made or installed in accordance with applicable provisions for the particular chassis from the original manufacturer.

KEY: motor vehicle safety, safety inspection manual

September 27, 2016

53-8-204

Notice of Continuation June 2, 2016

53-8-205

41-6a-1601

R714. Public Safety, Highway Patrol.**R714-161. Equipment Standards for Motorcycle Safety Inspections.****R714-161-1. Authority.**

This rule is authorized by Subsections 53-8-204(5) and 41-6a-1601(2).

R714-161-2. Purpose.

The purpose of this rule is to set minimum equipment standards governing motorcycle safety inspections in accordance with Sections 53-8-204 and 41-6a-1601.

R714-161-3. Definitions.

(1) Terms used in this rule are found in Sections 41-1a-102, 41a-6a-102, and 49 C.F.R. 571, et seq.

(2) In addition:

(a) "division" means the Vehicle Safety Inspection section of the Utah Highway Patrol;

(b) "inspector" means a person employed by a station licensed to conduct safety inspections;

(c) "online inspection certificate" means an inspection certificate created electronically through the Vehicle Safety Inspection System;

(d) "online inspection program" means the web-based inspection program used to record safety inspections;

(e) "OEM" means original equipment manufacturer;

(f) "paper inspection certificate" means an inspection certificate created by paper form; and

(g) "station" means a business or government facility located in Utah that is managed or operated by a valid permit holder and conducts safety inspections.

R714-161-4. Incorporation of Federal Motor Vehicle Safety Standards.

This rule incorporates by reference the standards found in 49 C.F.R. Part 571 as the minimum standards a motor vehicle must meet to pass a safety inspection, unless state law provides a different standard.

R714-162-5. Applicability of Rule.

This rule applies to all motorcycles.

R714-161-6. Inspection Procedures.

(1) The inspector shall complete the following tasks prior to inspecting the vehicle:

(a) collect the appropriate paperwork such as registration, title, and bill of sale;

(b) verify the vehicle identification number (VIN);

(c) record the owner's full name and complete vehicle information;

(d) record the vehicle mileage;

(e) enter the inspection date and inspector number if using a paper inspection certificate; and

(f) determine whether the vehicle needs a test drive and the purpose of test drive.

(2) If a test drive needs to be conducted off the station's property, the customer shall be informed.

(3) The inspector shall examine the vehicle by completing the following tasks:

(a) inspect the windshield, if equipped;

(b) inspect for adequate visibility from required mirrors;

(c) inspect for looseness in steering;

(d) inspect for play in the brake pedal;

(e) inspect the horn;

(f) inspect high and low beam headlights;

(g) inspect headlights for proper aim;

(h) inspect parking lights, tail lights, signal lights, brake lights, marker lights, and reflectors;

(i) inspect for the proper color of lights;

(j) inspect tires for wear, damage, and proper inflation;

(k) inspect body and fenders;

(l) inspect battery and electrical wiring;

(m) inspect exhaust system; and

(n) inspect master cylinder.

(4) The inspector shall examine the vehicle's suspension and undercarriage by completing the following tasks:

(a) inspect wheel bearings;

(b) inspect shock absorbers;

(c) inspect springs; and

(d) inspect the fuel system.

(5) The inspector shall examine the vehicle's braking system by completing the following tasks:

(a) inspect for loose or missing lug nuts;

(b) inspect wheel spokes;

(c) inspect for cracked wheels;

(d) inspect pads or shoes;

(e) inspect rotors or drums;

(f) record the brake measurements using the online inspection program or on the paper inspection certificate if not using the online program;

(g) inspect for fluid leaks; and

(h) inspect brake hoses.

(5) The following procedures apply when a vehicle fails the safety inspection and the inspector is using a paper inspection certificate:

(a) the inspector shall complete a full vehicle inspection even after a reject item is found;

(b) if a vehicle fails an inspection and no repairs are immediately made at that station, then the inspector shall give the customer a rejection inspection certificate;

(c) the inspector shall not sign the rejection inspection certificate;

(d) a customer with a rejected vehicle has up to 15 calendar days to complete all repairs and return to the same station to verify repairs at no charge;

(i) customers may contact the division to request a waiver of additional fees if they exceed 15 days for circumstances beyond their control, such as backordered parts;

(e) the inspector shall return the State Tax Commission and owner copies to the division within 45 days of the inspection date for rejected vehicles that fail to return to the inspecting station;

(f) the inspector shall document any item rejected and repaired during an inspection as repaired on the inspection certificate;

(g) any inspector at a station may verify repairs of rejected items;

(h) if all rejected items have been repaired, the verifying inspector shall sign the safety inspection certificate; and

(i) if the verifying inspector is not the original inspector, the verifying inspector shall sign the safety inspection certificate, and enter his or her inspector license number on the safety inspection certificate.

(6) The following procedures apply when a vehicle fails the safety inspection and the inspector is using an online inspection certificate:

(a) if all rejected items have been repaired, the verifying inspector shall sign the safety inspection certificate;

(b) if no repairs are made, the inspector shall print the rejection inspection certification and give it to the customer;

(c) the inspector shall not sign a rejection inspection certificate;

(d) a customer with a rejected vehicle has up to 15 calendar days to complete all repairs and return to any station that conducts online inspections to verify repairs at no additional vehicle inspection charge;

(i) customers may contact the division to request a waiver of additional fees if they exceed 15 days for circumstances

beyond their control, such as back ordered parts;

(e) the inspector shall document any item rejected and repaired during an inspection as repaired on the inspection certificate; and

(f) any inspector at a facility may certify repairs made to rejected items.

(7) The following procedures apply when a vehicle passes the safety inspection and the inspector is using a paper inspection certificate:

(a) the inspector performing the inspection shall sign the vehicle inspection certificate; and

(b) the customer shall be given the State Tax Commission and owner copies of the inspection certificate.

(8) The following procedures apply when a vehicle passes the safety inspection and the inspector is using an online inspection certificate:

(a) the inspector shall print the vehicle inspection certificate and give it to the customer; and

(b) the inspector performing the inspection shall sign the printed inspection certificate prior to giving it to the customer.

(9) The following inspection report procedures apply when the inspector is using a paper inspection certificate:

(a) the report forms shall include the following information:

- (i) date the inspection was completed;
- (ii) owner's name;
- (iii) year and make of the vehicle;
- (iv) vehicle identification number;
- (v) appropriate notation in any of the repair columns;
- (vi) total cost of the repair, including the inspection fee;

and

(vii) inspection certificate or sticker number;

(b) inspection certificate or sticker numbers of paper books shall be listed in numerical order starting with the lowest number and listed in groups of 25;

(c) a separate report form shall be used for the inspection certificates and for the stickers;

(d) duplicate inspection certificates or stickers shall be noted as "duplicate" on the report form;

(e) lost or stolen inspection certificates or stickers shall be listed as "lost or stolen" on the report form;

(f) inspection certificates and stickers rendered unusable through mishap shall be recorded as "voided" on the report form and inspection certificates and stickers shall be returned to the Vehicle Safety Inspection office;

(g) rejected vehicles that have not returned within 15 days to the original station shall be included in the report, and the words "rejected," printed on the same line as the rejected certificate is listed;

(h) failure to submit the required reports may result in suspension or revocation of a permit; and

(i) the inspector shall return the State Tax Commission and owner copies to the division within 45 days of the original inspection date for rejected vehicles that fail to return for re-inspection.

R714-161-7. Registration.

(1) When reviewing registration papers of a vehicle, the inspector shall:

(a) check the vehicle registration certificate, vehicle identification number, license plate, and vehicle description for agreement;

(b) enter the manufacturer's vehicle identification number and license plate number into the online program or record on the safety inspection certificate if not using the online program;

(c) advise the customer when paperwork disagreements are accidental or clerical in nature; and

(d) issue a rejection inspection certificate when:

(i) the registration certificate, vehicle identification

number, license plate, and vehicle description are not in agreement; or

(ii) the vehicle identification number is missing or obscured.

(2) The inspector shall examine the vehicle's license plate and comply with the following requirements:

(a) if the vehicle is registered, verify the license plate is securely mounted and clearly visible; and

(b) advise the customer when the license plate:

(i) is not securely fastened to the rear of the vehicle, in a horizontal position, not less than 12 inches from the ground when measured from the bottom of the license plate;

(ii) is not located in a clearly visible position; or

(iii) is covered with foreign material or otherwise not clearly legible.

R714-161-8. Tires and Wheels.

(1) When examining the tires and wheels of a vehicle, the inspector shall:

(a) check the wheel bolts; and

(i) issue a rejection inspection certificate when wheel bolts or nuts are loose, missing, or damaged;

(b) check the wheels for damage; and

(i) issue a rejection inspection certificate when:

(A) any part of the wheel is bent, out of round, cracked, re-welded, or if any spokes are missing, loose, or broken; or

(B) a wheel is not centered on the axle or wobbles in excess of 3/16 inch at three equally spaced intervals around the circumference of the tire;

(c) check the bearings by grasping the tire at the top and bottom and rocking it in and out; and

(i) issue a rejection inspection certificate when the wheel bearing play exceeds the manufacturer's recommended tolerances;

(d) check the tire tread depth, which may not be measured on the tread wear bar; and

(i) issue a rejection inspection certificate when:

(A) any tread wear indicator contacts the ground; or

(B) the tread depth is less than 2/32 when measured in any two adjacent major tread grooves at any location around the circumference of the tire;

(e) check the tire's condition; and

(i) issue a rejection inspection certificate when:

(A) a tire has any damage including cuts, weather cracks, or cords that are exposed; or

(B) a tire is worn to the extent secondary rubber is exposed in the tread or sidewall area;

(f) check the tires for bumps or bulges; and

(i) issue a rejection inspection certificate when a tire has visible bumps or bulges indicating partial failure or separation of the tire;

(g) check for tires that are re-grooved, re-cut, or labeled "not for highway use"; and

(i) issue a rejection inspection certificate when a tire has been re-grooved, re-cut, or is marked for other than highway use; and

(h) check the valve stems;

(i) issue a rejection inspection certificate when:

(A) the rubber stems are cracked or cut; or

(B) a metal stem lock nut is missing; and

(i) check the tire pressure with tire pressure gauge; and

(i) issue a rejection inspection certificate when tires are flat, have noticeable air leak, or are inflated to less than 50% of the vehicle manufacturer's recommended tire pressure.

R714-161-9. Steering.

(1) When inspecting the steering system of a vehicle, the inspector shall:

(a) check the steering head bearing and front forks; and

- (i) issue a rejection inspection certificate when:
 - (A) the steering head bearing adjustment does not meet the manufacturer's recommended torque value maximum for turning; or
 - (B) there is detectable play or roughness within the steering head bearings;
- (b) check the rear wheel centerline; and
- (i) issue a rejection inspection certificate when the rear wheel does not track within one 1/2 inch of the front wheel;
- (c) check the handlebar for proper construction and determine if it is constructed of at least .060 inch thick metal tubing; and
 - (i) issue a rejection inspection certificate when:
 - (A) cracks, deformation, or improper alignment are found;
 - (B) handlebars are loose or not secure;
 - (C) handlebars are above the shoulder height of the driver;
 - (D) the throttle grip is broken or missing; or
 - (E) handlebars are not constructed of at least .060 inch thick metal tubing; and
 - (d) check front forks for looseness, binding, and leakage; and
 - (i) issue a rejection inspection certificate when forks are loose, or there is evidence of binding or leakage.

R714-161-10. Brakes.

- (1) When inspecting the braking system of a vehicle, the inspector shall:
 - (a) check to ensure the vehicle is equipped with front and rear brakes; and
 - (i) issue a rejection inspection certificate when:
 - (A) any brake fails to produce adequate braking; or
 - (B) the vehicle is missing the front or rear brake;
 - (1) a vintage vehicle is only required to have one operational brake if OEM;
 - (b) check hand levers and foot pedals; and
 - (i) issue a rejection inspection certificate when:
 - (A) a hand lever is broken or sufficient leverage cannot be applied;
 - (B) a hand lever or foot pedal is improperly positioned, misaligned, or does not return freely;
 - (C) modifications made to the hand levers or foot pedal make a hand lever or foot pedal inaccessible for adequate leverage and safe operation; or
 - (D) a hand lever or foot pedal is rusted, frozen, or inoperative;
 - (c) check the adjusters, actuating cam, cam shaft, anchor pins, springs, and linkage for wear and looseness; and
 - (i) issue a rejection inspection certificate when:
 - (A) brake adjusters are unable to be locked;
 - (B) the brake adjustment changes when the fork is extended;
 - (C) the brake adjustment is not within OEM specifications;
 - (D) the cam-operating lever has been repositioned on the shaft to avoid replacing a worn cam, worn shoes, or worn lining;
 - (E) there is binding in linkage or components;
 - (F) there is wear in the cam or if springs are not strong enough to return and hold shoes against cam; or
 - (G) any brake component is missing or broken;
 - (d) check springs, cables, cotter pins, devices, couplings, and grease retainers; and
 - (i) issue a rejection inspection certificate when:
 - (A) cables are frayed, broken, or pinched during normal operation;
 - (B) cotter pins are missing or broken;
 - (C) cables are rusted or frozen; or
 - (D) grease retainers are leaking;
 - (e) check the hydraulic hoses and tubing for leaks, cracks, chafing, flattened, or restricted sections; and
 - (i) issue a rejection inspection certificate when:

- (A) hoses or tubing leak;
- (B) hoses are cracked or chafed exposing metal or fabric cord;
- (C) hoses are flattened or restricted;
- (D) hoses and tubes are not securely fastened;
- (E) the master cylinder leaks or the fluid level is lower than the manufacturer's specifications; or
- (F) leakage is found anywhere in the braking system or wheel cylinder;
- (f) check the brake lining for contamination and wear, which must be replaced once it has been contaminated;
- (g) check the wear indicator or adjustment indicator arrows on vehicle with an enclosed rear drum; and
- (i) issue a rejection inspection certificate when:
 - (A) linings are contaminated with oil, grease, or brake fluid;
 - (B) the thinnest point of the lining measures 1/32 inch or less or the pads are worn to the wear indicators; or
 - (C) the arrow indicator is past the last mark on the wear indicating plate;
 - (h) check the vehicles brake drums for external cracks, mechanical damage, or wear beyond manufacturer's specifications; and
 - (i) issue a rejection inspection certificate when:
 - (A) there are external cracks or evidence of mechanical damage; or
 - (B) the brake drum is worn beyond the manufacturer's specifications; and
 - (i) check rotors and friction surface for mechanical damage, contamination, or wear beyond manufacturer's specifications; and
 - (i) issue a rejection inspection certificate when:
 - (A) a crack extends to the edge of rotor or there is evidence of mechanical damage;
 - (B) the friction surface is contaminated; or
 - (C) the rotor is worn beyond manufacturer's specifications.

R714-161-11. Lighting.

- (1) When inspecting the lighting system of a vehicle, the inspector shall:
 - (a) check for proper headlamp equipment and proper functioning; and
 - (i) issue a rejection inspection certificate when:
 - (A) the headlamp is not marked USDOT approved, unless it is a vintage vehicle that was manufactured prior to USDOT markings;
 - (B) the headlamp minimum height is less than 22 inches or more than 54 inches to the center of the low beam;
 - (C) the high beam indicator fails to function when equipped;
 - (D) the headlamp fails to light or the headlamp switch fails to function;
 - (E) a non-clear headlamp covering is placed on or in front of any headlamp;
 - (F) the headlamp is tinted, colored, or painted;
 - (G) the vehicle has no headlamp or more than two headlamps;
 - (H) lenses are patched, taped, or covered with any foreign substance, unless it is patched with another automotive lens piece, is glued on, and is permanent; or
 - (I) the headlamp is a pulsating headlight that is not USDOT approved;
 - (b) check the headlamp aiming on both the high and low beams; and
 - (i) issue a rejection inspection certificate when the low or high beam is out of adjustment;
 - (c) check the turn signal operation for proper functioning as designed by OEM, if the vehicle was originally equipped with turn signals; and

- (i) issue a rejection inspection certificate when:
 - (A) a turn signal is missing and the motorcycle was manufactured after January 1, 1973;
 - (B) a turn signal fails to function properly;
 - (C) a turn signal lamp is not the correct color, which must be amber on the front of the vehicle and red or amber in the rear of the vehicle; or
 - (D) there is any cover over the lens;
- (d) check the stop lamp for proper functioning; and
- (i) issue a rejection inspection certificate when:
 - (A) a stop lamp on a vehicle manufactured after January 1, 1969 fails to operate when the front or rear brakes are applied;
 - (B) a stop lamp on a vehicle manufactured before January 1, 1969 fails to operate when the service, or foot brake, is applied;
 - (C) a stop lamp does not emit red light;
 - (D) a stop lamp is painted or is covered by any non-clear lens cover or material;
 - (E) a stop lamp has a blue dot taillight; or
 - (F) a stop lamp bulb or lens is tinted or covered with any material that impairs the intended original performance characteristics of the light;
- (e) check to ensure the stop lamp properly operates with the front brake application and separately with the application of the rear brake, if the vehicle was manufactured after January 1, 1969;
 - (i) vintage vehicles that were not manufactured with handlebar actuated brake lights are exempt from the requirement in Subsection R714-161-11(1)(g);
 - (f) check the tail lamp for proper functioning; and
 - (i) issue a rejection inspection certificate when:
 - (A) at least one of the tail lamps, covers or lenses is not the color red;
 - (B) the lamp is not visible from 1,000 feet; or
 - (C) a tail lamp bulb or lens is tinted or covered with any material that impairs the intended original performance expectations of the light;
 - (g) check for a rear reflector and verify it is the color red; and
 - (i) issue a rejection inspection certificate when the reflectors are missing or are not the color red;
 - (ii) when one reflector is used, the inspector shall verify that it is mounted at the rear centerline; or
 - (iii) when two reflectors are used, the inspector shall verify the reflectors are evenly spaced about the rear centerline; and
 - (h) check for driving light operation; and
 - (i) issue a rejection inspection certificate when:
 - (A) the headlamps or driving lamps are not properly aimed; or
 - (B) the headlamps are any improper color, painted, or are covered by any non-clear lens cover or material.

R714-161-12. Electrical System.

- (1) When inspecting the electrical system of a vehicle, the inspector shall:
 - (a) check for proper operation of the horn, which must be audible for at least 200 feet; and
 - (i) issue a rejection inspection certificate when:
 - (A) the horn is missing, loose, fails to function, or is not electrical;
 - (B) the horn button is not easily accessible; or
 - (C) the horn is not audible for at least 200 feet.
 - (b) check for proper functioning of switches, including the headlight high and low switch, engine kill switch, turn signal switch, and brake light; and
 - (i) issue a rejection inspection certificate when any required switch is broken, missing, or fails to function properly;
 - (c) check the condition of the wiring; and
 - (i) issue a rejection inspection certificate when the

insulation is worn, bare wires are exposed, or wires show evidence of short circuiting or are inadequate to operate items properly; and

(d) check for loose connections and proper functioning in the vehicle's wiring connections; and

(i) issue a rejection inspection certificate when connections are loose, corroded, or fail to function properly.

R714-161-13. Windshield.

(1) When inspecting the windshield of a vehicle, the inspector shall:

(a) check the windshield, if equipped, for cracks, scratches, discoloration, obstruction, light transmittance, and ensure it is an approved type of windshield;

(b) check the tint of the wind deflector to ensure it does not interfere with the driver's vision; and

(c) issue a rejection inspection certificate when:

(i) the driver's vision is obscured due to cracks, scratches, or discoloration;

(ii) the windshield is not an approved type;

(iii) a stiffener device is mounted in the line of vision; or

(iv) there is less than 70% light transmittance.

R714-161-14. Frame and Body.

(1) When inspecting the body of a vehicle, the inspector shall:

(a) check the frame for welds, cracks, or structural damage; and

(i) issue a rejection inspection certificate when there are welds, cracks, or structural damage that constitute a hazard;

(b) check the fenders for proper mounting, cracks, breaks, bends, and sharp edges; and

(i) issue a rejection inspection certificate when fenders are missing, improperly mounted, cracked, bent or have sharp edges;

(c) verify the front fender covers 45 degrees to the front and 45 degrees to the rear;

(d) verify the rear fender covers the top half of the tire;

(e) check the chain, sprocket, or belt protective guards for proper operation; and

(i) advise the customer when chain or belt guard is missing, broken, or cracked; or

(ii) issue a rejection inspection certificate when:

(A) the chain is worn beyond manufacturer's specification;

(B) the sprocket is worn beyond manufacturer's specification; or

(C) the belt drive or drive belt is worn beyond the manufacturer's specifications;

(f) check the seat for proper attachment;

(g) check the seat's locking device and determine if it functions properly; and

(i) issue a rejection inspection certificate when:

(A) the seat is not properly and securely attached; or

(B) the locking device fails to function properly;

(h) if the seat is designed for two people, check the seat area for hand holds to ensure the hand holds are properly attached and of sufficient strength and size to adequately support 200 pounds; and

(i) issue a rejection inspection certificate when a hand hold is not present, when required, or when it is not of sufficient strength and size to adequately support 200 pounds;

(i) check the foot rests on a vehicle that has a seat designed for two people; and

(i) issue a rejection inspection certificate when foot rests are not present, when required;

(j) check the frame and mounting brackets on the engine; and

(i) issue a rejection inspection certificate when the engine mounts or brackets are cracked or broken;

- (k) check the vehicle stand for proper operation; and
- (i) issue a rejection inspection certificate when:
 - (A) the stand fails to hold the vehicle in an up-right position;
 - (B) the stand fails to stay in the stored position or is secured by wire or other methods; or
 - (C) the side or center stand is cracked, broken, or loose;
- and
- (l) check the left side mirror; and
- (i) issue a rejection inspection certificate when:
 - (A) the left side mirror is missing; or
 - (B) the left side mirror is broken, cracked, or otherwise damaged to the point rearward vision is obscured.

R714-161-15. Suspension.

- (1) When inspecting the swing arm bushing of a vehicle, the inspector shall:
 - (a) check the swing arm bushing and suspension, which must be adjusted according to the manufacturer's tolerances; and
 - (i) issue a rejection inspection certificate when the swing arm bushing is worn beyond the manufacturer's recommended specifications.

R714-161-16. Exhaust System.

- (1) When inspecting the exhaust system of a vehicle, the inspector shall:
 - (a) check the exhaust system for proper operation; and
 - (i) advise the customer when joints are loose, broken, or if any leakage exists; or
 - (ii) issue a rejection inspection certificate when:
 - (A) components are not properly mounted or supporting brackets are not secure;
 - (B) the muffler has been removed or is not functioning properly;
 - (C) any muffler cutout or bypass is used; or
 - (D) the exhaust system has been changed or modified and is not as effective as OEM specifications.

R714-161-17. Fuel System.

- (1) When inspecting the fuel system of a vehicle, the inspector shall:
 - (a) check the fuel system for any leaks and ensure it is secure;
 - (b) check to ensure the gas tank meets OEM specifications;
 - (c) check to ensure the gas tank is properly capped; and
 - (d) issue a rejection inspection certificate when:
 - (i) any part of the fuel system is not securely fastened;
 - (ii) there is leakage at any point in the fuel system; or
 - (iii) the gas tank is not properly capped or does not meet OEM specifications.

R714-161-18. Off-Highway Motorcycle.

- (1) An off-highway motorcycle may be inspected provided that it has been modified to be street legal.
- (2) An off-highway motorcycle that has been modified to be street legal is subject to the same vehicle standards in this Rule.

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R714. Public Safety, Highway Patrol.**R714-163. Street-Legal All-Terrain Vehicles.****R714-163-1. Authority.**

This rule is authorized by Subsections 53-8-204(5) and 41-6a-1601(2).

R714-163-2. Purpose.

The purpose of this rule is to set minimum equipment standards governing ATV safety inspections in accordance with Sections 53-8-204 and 41-6a-1601.

R714-163-3. Definitions.

Terms used in this rule are found Section 41-6a-102.

R714-163-4. Applicability of Rule.

This rule applies to all street-legal ATVs.

R714-163-5. Inspection Requirements.

(1) An all-terrain type 1 vehicle, utility type vehicle, or full-sized all-terrain vehicle being operated as a street-legal ATV shall meet the inspection requirements in Section 41-6a-1509(2)(b)(iii).

(a) A full-sized all-terrain vehicle being operated as a street-legal ATV is exempt from the mudflap, fender, and bumper requirements in Section R714-160.

(2) An all-terrain type 1 vehicle or utility type vehicle being operated as a street-legal ATV shall be equipped with the items listed in Section 41-6a-1509(3)(a).

(a) The inspector shall issue a rejection certificate when any of the requirements in Section 41-6a-1509(2)(b) or Section 41-6a-1509(3)(a) are not met.

(3) A full-sized all-terrain vehicle shall be equipped with the items listed in Section 41-6a-1509(3)(b).

(a) The inspector shall issue a rejection certificate when:

(i) any of the requirements in Section 41-6a-1509(2)(b) or Section 41-6a-1509(3)(b) are not met; or

(ii) the vehicle is not designed for or capable of travel over unimproved terrain.

KEY: street-legal all-terrain vehicles, safety inspections**September 27, 2016****53-8-204****41-6a-1601**

R850. School and Institutional Trust Lands, Administration.
R850-140. Development Property.
R850-140-100. Authorities.

This rule implements Sections 6, 8, 10 and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution and Subsection 53C-1-302(1)(a) and Section 53C-4-101, which authorize the director of the School and Institutional Trust Lands Administration to establish rules and criteria for the disposition of trust lands.

R850-140-200. Purpose of Development Property Rules.

This rule permits the agency to designate trust land as development property and thereby

1. subject agency activities in connection with such properties to this rule; and
2. exempt agency activities in connection with such properties from the rules listed in R850-140-1000.

R850-140-250. Definitions.

For the purposes of this rule:

1. **Development Property:** a parcel of trust land that has been designated a development property pursuant to the director's determination that the parcel meets the criteria established in R850-140-300(1).
2. **Development Transaction:** a transaction entered into by the agency for the purpose of generating financial returns to the trust from real estate development of a particular development property. Development transactions include sales, exchanges, ground leases, development leases, build-to-suit leases, joint ventures, and Other Business Arrangements with respect to development properties.
3. **Joint Venture:** a transaction in which the agency contributes trust assets to a joint undertaking in which such assets may be subject to risk of loss, including without limitation a transaction in which the agency becomes a member of a limited liability company in exchange for the commitment of trust assets.
4. **Other Business Arrangement:** a transaction other than a joint venture which involves similar risk of loss of trust assets as a joint venture and which involves material reliance on the economic performance of a third party or other contingent events to generate expected returns. The non-subordinated lease of trust property for development purposes, with the trust's returns based upon a percentage of final property sales, is not an Other Business Arrangement.
5. **Supporting Transaction:** a transaction entered into by the agency for the purpose of preparing for or supporting real estate development on trust lands, but not directly conveying trust lands for real estate development purposes. Supporting transactions include without limitation: exchange, acquisition or conveyance of lands for assemblage or configuration of development projects; agreements with local government entities with respect to development entitlements and provision of infrastructure; rights-of-entry, dedications and easements for development improvements and amenities on trust lands; and leasing or conveyance of trust lands for necessary development infrastructure and amenities.

R850-140-300. Designation of Development Property.

1. The director may designate a property as a development property upon the director's determination that the following criteria are met:
 - (a) The property is located in or near an urban area of the State or, in more rural locations, the property is of a character suitable for current or future commercial, industrial, resort, residential or other real estate development activities; or
 - (b) The agency has received inquiry from private parties concerning the potential for development of the property or the agency, after preliminary analysis, has determined that the

probable highest and best use for the property is for development purposes.

2. The director shall maintain a database of each property designated as a development property. The director may remove property from development designation in his discretion as deemed appropriate for the best interests of the trust beneficiaries.

R850-140-350. Planning.

1. Prior to designating a property as a development property, the agency shall submit the proposed designation to the Resource Development Coordinating Committee (RDCC), and evaluate and respond to comments received through the RDCC process. Participation in the RDCC process shall constitute compliance with Subsection 53C-2-201(1).
2. If the agency chooses to participate in local government planning and entitlement processes, such participation constitutes an additional degree of planning supplemental to the RDCC process, but is not required under Subsection 53C-2-201(1).

R850-140-400. Development Transactions - General Provisions.

1. Subject to the board notice and approval provisions contained in R850-140-500 and R850-140-600, the agency may solicit and reject proposals, make offers, counter offers and otherwise negotiate freely with interested parties in its efforts to arrange development transactions that are in the best interests of the trust. Development transactions will be structured according to the circumstances of the market and the attributes of the particular development property.
2. Prior to entering a development transaction, the agency shall initiate an appropriate advertising program designed to effectively solicit interested parties. Advertising may be implemented through print media, internet, signage, direct mail or other appropriate marketing methods.
3. In negotiating development transactions, the agency shall undertake appropriate due diligence with respect to the proposed transaction, including consideration of the following criteria:
 - (a) The ownership, character, reputation, financial status, credit and litigation history and prior real estate development experience of the party with whom the development transaction is proposed.
 - (b) The financial attributes of the proposed development transaction.
 - (c) The legal structure of the proposed development transaction.
 - (d) The potential effects of the proposed development transaction upon nearby trust lands; and
 - (e) Whether the proposed transaction will bring the highest long-term return to the trust compared to other reasonably foreseeable alternatives.
4. Development transactions shall result in the trust receiving not less than fair market value for the sale, use or exchange of the development property in question.
5. The purchase, sale or exchange of land in connection with a development transaction shall be supported by either an appraisal or a detailed internal analysis of value.
6. Formal contract documentation of any development transaction shall be subject to approval by a representative of the attorney general's office. No party to a proposed development transaction shall have any vested rights in the transaction until the formal contract documents have been approved by the agency representative of the attorney general's office, approved by the board if required by rule or statute, approved and executed by the director, and delivered.

R850-140-500. Development Transactions -- Approval of

Minor Development Transactions.

1. For purposes of this rule, a minor development transaction is a proposed development transaction that:

- (a) involves a projected commitment of trust lands or assets of less than \$5 million; or
- (b) if the proposed development transaction is a joint venture or Other Business Arrangement, involves a projected commitment of trust lands or assets of less than \$2 million.

2. The agency shall provide the board with the following information with respect to a proposed minor development transaction:

- (a) a description of the parties to and terms of the proposed transaction;
- (b) an economic analysis of the proposed transaction;
- (c) a description of the competitive/advertising process used in soliciting offers for the transaction;
- (d) a declaration of staff conflicts of interest, if any;
- (e) if the transaction will involve the subordination of trust assets in connection with a joint venture or Other Business Arrangement, a description of the assets and an analysis of relevant risks to those assets; and
- (f) other relevant information derived from the agency's due diligence activities.

3. The board must approve any proposed minor development transaction that is a joint venture or Other Business Arrangement in accordance with Subsection 53C-1-303(4)(e).

4. The director may approve any proposed minor development transaction that is not a joint venture or Other Business Arrangement after compliance with R850-140-500(2).

5. The board or director, as appropriate, may approve, conditionally approve, or reject any proposed minor development transaction consistent with their fiduciary obligations.

R850-140-600. Development Transactions -- Approval of Major Development Transactions.

1. For purposes of this rule, a major development transaction is a proposed development transaction that:

- (a) involves a projected commitment of trust lands or assets of \$5 million or more; or
- (b) involves a projected commitment of trust lands or assets of \$2 million or more if the proposed development transaction is a joint venture or Other Business Arrangement.

2. Prior to entering negotiations for a major development transaction, the agency shall provide the board with the following information:

- (a) relevant information concerning the property and the financial aspects of a possible transaction, including:
 - (i) property value;
 - (ii) financial goals for a proposed transaction;
 - (iii) timeliness of a proposed transaction; and
 - (iv) type of transaction contemplated;
- (b) a summary of the anticipated competitive process and advertising program to be utilized in soliciting proposals; and
- (c) other information requested by the board to assist it in evaluating the proposed transaction.

3. Prior to seeking final board approval of a major development transaction, the agency shall provide the board with the following information:

- (a) a statement of the key terms of the transaction;
- (b) the results of the agency's due diligence activities under R850-140-400(3)(a);
- (c) a projected financial pro forma for the transaction;
- (d) the results of the competitive process and advertising process utilized to select the proposed transaction; and
- (e) a declaration of staff conflicts of interest, if any;
- (f) a description of legal risks assumed by the trust;
- (g) an analysis of the financial strength and commitment of the parties to the transaction; and

(h) if the transactions will involve the subordination of trust assets in connection with a joint venture or Other Business Arrangement, a description of the assets and an analysis of relevant risks to those assets.

4. The board must approve any proposed major development transaction prior to the director's execution of the transaction.

5. The board or director, as appropriate, may approve, conditionally approve, or reject proposed major development transactions consistent with their fiduciary obligations.

R850-140-700. Amendments to Development Transactions.

1. The agency may amend development transactions subject to the conditions contained in Subsections R850-140-700(2) through(4).

2. No amendment to a development transaction shall result in the trust receiving less than fair market value for the sale, use or exchange of the property in question.

3. The director shall deliver a summary description of the terms of proposed material amendments to minor or major development transactions to the board with sufficient detail to permit the board to review the proposed amendment consistent with its statutory duties.

4. All amendments that will materially modify the financial terms of a joint venture, Other Business Arrangement, or major development transaction must be approved by the board.

R850-140-800. Supporting Transactions.

1. The agency may enter into supporting transactions as necessary to promote prudent and profitable development of trust lands designated as development properties.

2. The purchase, sale or exchange of land in connection with a supporting transaction shall be supported by either an appraisal or a detailed internal analysis of value.

3. The board must approve any proposed supporting transaction that involves the purchase, sale or exchange of land having a value in excess of \$500,000.00.

R850-140-900. Deviation from Rules.

In situations where the board determines that an economic opportunity favorable to the trust beneficiaries may otherwise be lost, or other good cause exists that is in furtherance of the statutory obligations of the board, the board may authorize the agency to deviate from the transactional approval processes set forth in this rule, so long as the board and agency's actions are otherwise in compliance with law.

R850-140-1000. Exemption From Rules.

The agency, in connection with its activities in managing and conveying development property, shall be subject to all rules applicable to the agency, except the following, which shall not be applicable:

- (a) R850-3-300. Application Forms.
- (b) R850-3-400. Application Processing.
- (c) R850-4. Application Fees and Assessments.
- (d) R850-30. Special Use Leases.
- (e) R850-40. Easements.
- (f) R850-41. Rights-of-Entry.
- (g) R850-80. Sale of Trust Lands. (Except R850-80-250.)
- (h) R850-90. Land Exchanges.

KEY: development, land sale, real estate**October 22, 2009****Notice of Continuation September 14, 2016****53C-2-201****53C-4-101(1)****53C-4-103**

R861. Tax Commission, Administration.**R861-1A. Administrative Procedures.****R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.**

A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.

B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.

C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.

D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.

E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.

F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.

G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.

H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

R861-1A-3. Division Conferences Pursuant to Utah Code**Ann. Sections 59-1-210 and 63G-4-102.**

Any party directly affected by a commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in that action.

- (1) A request may be oral or written.
- (2) A conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved.
- (3) The party requesting a conference will be notified of the result:
 - (a) orally or in writing;
 - (b) in person or through counsel; and
 - (c) at the conclusion of the conference or within a reasonable time thereafter.
- (4) A conference may be held at any time prior to a hearing, whether or not a petition for hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

R861-1A-9. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

(1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

- (2) Appeals to the commission shall include:
 - (a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;
 - (b) a copy of the notice required under Section 59-2-919.1;
 - (c) a copy of the minutes of the board of equalization;
 - (d) a copy of the property record maintained by the assessor;
 - (e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under R884-24P-66;
 - (f) a copy of the evidence submitted by the parties to the board of equalization;
 - (g) a copy of the petition for redetermination; and
 - (h) a copy of the decision of the board of equalization.
- (3) A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.
- (4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.
- (5) Appeals to the commission shall be on the merits except for the following:
 - (a) dismissal for lack of jurisdiction;
 - (b) dismissal for lack of timeliness;
 - (c) dismissal for lack of evidence to support a claim for relief.
- (6)(a) The commission shall consider, but is not limited to, the facts and evidence submitted to the county board.
 - (b) A party may raise a new issue before the commission.
- (7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.
- (8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the

commission determines that:

- (a) dismissal under Subsection (5)(a) or (c) was improper;
 - (b) the taxpayer failed to exhaust all administrative remedies at the county level;
 - (c) in the interest of administrative efficiency, the matter can best be resolved by the county board;
 - (d) the commission determines that dismissal under Subsection (5)(a)(c) is improper under R884-24P-66; or
 - (e) a new issue is raised before the commission by a party.
- (9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, please see Section 59-2-1004 and R884-24P-66.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

- 1. these rules and the provisions thereof,
- 2. the revenue laws of the state of Utah, and
- 3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Sections 41-3-209, 59-1-210, 59-1-403, and 59-1-405.

(1) Hearings.

(a) Except as provided under Subsection (1)(b), and pursuant to Section 59-1-405, hearings related to appeals filed with the commission are confidential tax matters and not subject to Title 52, Chapter 4, Open and Public Meetings Act.

(b) Hearings related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are open to the public.

(2) Orders.

(a) Except as provided in Subsections (2)(b) through (e), written orders signed by the commission will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality; or

(ii) the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify a particular person.

(b) Property tax orders signed by the commission that do not contain commercial information will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required or allowed under state law.

(c)(i) Property tax orders signed by the commission that contain commercial information will be mailed to the appropriate persons in accordance with Section 59-1-404 and rule R861-1A-37, Provisions Relating to Disclosure of Commercial Information.

(ii) Copies of property tax orders described in Subsection (2)(c)(i), or information about them, will be made available to persons other than the persons described in Section 59-1-404 and rule R861-1A-37 under the following circumstances:

(A) the parties have affirmatively waived any claims to confidentiality;

(B) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, commercial information, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(C) the disclosure is required or allowed under state law.

(d) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 1a, Motor Vehicle Act, will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required under state law.

(e) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business

Regulation, are public information and may be publicized.

(3) Commission Notes and Workpapers.

(a) All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the commission, are protected, and access to the specific material is restricted to employees of the commission and its legal counsel only.

(b) Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

(4) Reciprocal Agreements.

(a) The commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service or the revenue service of any other state.

(b) For all taxes other than individual income tax and corporate franchise tax, the commission may share information gathered from returns and other written statements with the federal government, other states, and political subdivisions within and without the state if the political subdivision, state, or federal government grant substantially similar privileges to this state.

(5) Statistical Information. The commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be made available after review and approval of the commission.

(6) Publication of Delinquent Taxpayer Information.

(a) For purposes of this Subsection (6), "delinquent taxpayer" does not include a person subject to a tax under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information;

(iii) Title 59, Chapter 10, Part 2, Trusts and Estates; or

(iv) Title 59, Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act.

(b) The commission may publicize the following information relating to a delinquent taxpayer:

(i) name;

(ii) address;

(iii) the amount of money owed by tax type; and

(iv) any legal action taken by the commission, including charges filed and property seized.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201.

(1) Individuals with a disability may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

(a) Requests shall be directed to:

Accommodations Coordinator

Utah State Tax Commission

210 North 1950 West

Salt Lake City, Utah 84134

Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

(b) Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

(c) Requests shall include the following information:

(i) the individual's name and address;

(ii) a notation that the request is made in accordance with the Americans with Disabilities Act;

(iii) a description of the nature and extent of the

individual's disability;

(iv) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

(v) a description of the requested accommodation if an accommodation has been identified.

(2) The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

(a) The reply shall advise the individual that:

(i) the requested accommodation is being supplied; or

(ii) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

(iii) the request for accommodation is denied. A reason for the denial must be included; or

(iv) additional time is necessary to review the request. A projected response date must be included.

(b) All denials of requests under Subsections (2)(a)(ii) and (2)(a)(iii) shall be approved by the executive director or designee.

(c) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(3) Individuals with a disability who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

(a) Requests for review shall be directed to:

Executive Director

Utah State Tax Commission

210 North 1950 West

Salt Lake City, Utah 84134

Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711

(b) A request for review must be filed within 180 days of the accommodations coordinator's reply.

(c) The request for review shall include:

(i) the individual's name and address;

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

(iii) a copy of the accommodation coordinator's reply;

(iv) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;

(v) a description of the accommodation desired; and

(vi) the signature of the individual or the individual's legal representative.

(4) The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

(a) If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

(b) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(5) The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63G-2-305 until the executive director issues a decision.

(6) Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63G-2-302 or controlled under Section 63G-2-304, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

(7) Individuals with a disability who are dissatisfied with

the executive director's decision may appeal that decision to the commission in the manner provided in Sections 63G-4-102 through 63G-4-105.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;
2. home address;
3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

(1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

(2) The structure of the agency is as follows:

(a) The Office of the Commission, including the commissioners and the following units that report to the commission:

- (i) Internal Audit;
- (ii) Appeals;
- (iii) Economic and Statistical; and
- (iv) Public Information.

(b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

- (i) Administration;
- (ii) Taxpayer Services;
- (iii) Motor Vehicle;
- (iv) Auditing;
- (v) Property Tax;
- (vi) Processing; and
- (vii) Motor Vehicle Enforcement.

(3) The Executive Director shall oversee service agreements from other departments, including the Department of Human Resources and the Department of Technology Services.

(4) The commission hereby delegates full authority for the following functions to the executive director:

(a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);

(b) management of the day to day relationships with the customers of the agency;

(c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);

(d) in conformance with standards established by the commission, waivers of penalty and interest pursuant to Section 59-1-401 in amounts under \$10,000, or offers in compromise agreements in amounts under \$10,000;

(e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers;

(f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;

(g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

(h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

- (a) the agency budget;
- (b) the strategic plan of the agency;
- (c) administrative rules and bulletins;
- (d) waivers of penalty and interest in amounts of \$10,000 or more pursuant to Section 59-1-401 as per the waiver of penalty and interest policy;

(e) offer in compromise agreements that abate tax, penalty and interest over \$10,000 as per the offer in compromise policy;

(f) stipulated or negotiated agreements that dispose of matters on appeal; and

(g) voluntary disclosure agreements that meet the following criteria:

- (i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and
- (ii) the agreement forgives a known past tax liability of \$10,000 or more.

(6) The commission shall retain authority for the following functions:

- (a) rulemaking;
- (b) adjudicative proceedings;
- (c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;
- (d) internal audit processes;
- (e) liaison with the governor's office;

(i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

(ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

(f) liaison with the Legislature.

(i) The commission will set legislative priorities and communicate those priorities to the executive director.

(ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

(7) Correspondence that has been directed to the commission or individual commissioners that relates to matters

delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

(8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

(a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

(b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

(9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

(a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

(b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

(c) When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-1-1410, 59-2-1007, 59-7-517, 59-12-114, 59-13-210, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5.

(1) A request for a hearing to correct a centrally assessed property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(c) A request for a hearing that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(2) Except as provided in Subsection (3), a petition for redetermination of a deficiency must be received in the

commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(c) A petition for redetermination that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(3) A petition for redetermination of a claim for refund filed in accordance with 59-1-1410 is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

(c) A petition for redetermination of a claim for refund that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(4)(a) An appeal of an action taken by the Motor Vehicle Division under Title 41, Chapter 1a, or the Motor Vehicle Enforcement Division under Title 41, Chapter 3, must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal.

(b) An appeal under Subsection (4)(a) is deemed to be timely if:

(i) in the case of mailed or hand-delivered documents:

(A) the petition is received in the commission offices on or before the close of business of the last day of the 30-day time period; or

(B) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day time period; or

(ii) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day time period.

(c) An appeal of an action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(5) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63G-4-201.

(1) Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

(2) Contents. A petition for adjudicative action need not

be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:

(a) name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

(b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

(c) petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

(d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

(e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

(f) in the case of property tax cases, the assessed value sought.

(3) Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202.

(1) All matters shall be designated as formal proceedings and set for an initial hearing, a status conference, or a scheduling conference pursuant to R861-1A-26.

(2) A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63G-4-206, and 63G-4-208.

(1) The following may preside at a formal proceeding:

(a) a commissioner;

(b) an administrative law judge appointed by the commission; or

(c) in the case of a formal proceeding that relates to a matter that is not a tax, fee, or charge as defined under Section 59-1-1402:

(i) a commissioner;

(ii) an administrative law judge appointed by the commission; or

(iii) a hearing officer appointed by the commission.

(2) Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

(a) A party may request that one or more commissioners be present at any hearing. However, the decision of whether the request is granted rests with the commission.

(b) If more than one commissioner, administrative law judge, or hearing officer is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.

(3) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.

(a) Initial Hearing.

(i) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

(ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.

(iii) Any issue may be settled in the initial hearing, but any

party has a right to a formal hearing on matters that remain in dispute after the initial hearing decision is issued.

(iv) Any party dissatisfied with the result of the initial hearing must file a timely request for a formal hearing before pursuing judicial review of unsettled matters.

(b) Formal Hearing.

(i) The commission shall make a record of all formal hearings, which may include a written record or an audio recording of the proceeding.

(ii) Evidence presented at the initial hearing will not be included in the record of the formal hearing, unless specifically requested by a party and admitted by the presiding officer.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63G-4-204 through 63G-4-209.

(1) A scheduling or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;

(ii) discuss scheduling;

(iii) clarify other issues;

(iv) determine whether to refer the action to a mediation process; and

(v) determine whether the initial hearing will be waived.

(b) The scheduling or status conference may be converted to an initial hearing upon agreement of the parties.

(2) Notice of Hearing. At least ten days prior to a hearing date, the commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

(3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

(4) Representation.

(a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

(i) An attorney licensed in a jurisdiction outside Utah may represent a taxpayer before the commission without being admitted pro hac vice in Utah.

(ii) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.

(iii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.

(iv) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile

number, e-mail address or other electronic means.

(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.

(5) Subpoena Power.

(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.

(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.

(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.

(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

(6) Motions.

(a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

(b) Continuance. A continuance may be granted at the discretion of the presiding officer.

(i) In the absence of a scheduling order:

(A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.

(B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.

(C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.

(ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.

(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63G-4-209.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization

decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63G-4-205.

(1) Discovery procedures in formal proceedings shall be established during the scheduling, and status conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

(2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 63G-4-206, 76-8-502, and 76-8-503.

(1) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

(2) Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(a) The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

(b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

(c) If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

(3) At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

(a) Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

(b) Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

(c) The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

(d) If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled

testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

(4) The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

(5) Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

(6) Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Sections 59-1-205 and 63G-4-302.

(1) "Taxpayer" for purposes of the requirement under Section 59-1-205 that in a tie vote of the commission the position of the taxpayer is considered to have prevailed, includes:

(a) a person that has received a license issued by the commission; or

(b) an applicant for a license issued by the commission.

(2) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing.

(A) The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the commission.

(B) If a party withdraws an appeal, the initial decision becomes final as of the date that is 30 days after the date of the issuance of the initial hearing decision.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(3) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or

denied, or is under review.

(i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

(b) If no petition for reconsideration is made, the 30-day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63G-4-203 and 63G-4-206.

(1) No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

(2) No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

(3) A presiding officer may receive aid from staff assistants if:

(a) the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

(b) in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

(4) Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503.

(1) A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute.

(2) A party with standing may petition for a declaratory order to challenge:

(a) the commission's interpretation of statutory language as stated in an administrative rule; or

(b) the commission's grant of authority under a statute.

(3) The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

(4) The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

(5) A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code

Section 63G-4-102.

(1) Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

(a) The parties may agree to pursue mediation any time before the formal hearing on the record.

(b) The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

(2) If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

(a) The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

(b) The settlement agreement shall be adopted by the commission if it is not contrary to law.

(c) If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

(d) If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1-502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued

by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.**A. Definitions.**

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media

in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and

made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-7-505, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

(1) Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

(2) Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

(3) Taxpayers who file a tax return under Title 59, Chapter 10, Individual Income Tax Act, electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

(4) Taxpayers who file a corporate franchise and income tax return electronically and who meet the signature requirement

of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-7-505.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

- (a) named party of a decision or order;
- (b) party requesting a private letter ruling; or
- (c) designated representative of a party described in Subsection (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

- (a) named party of a decision or order;
- (b) party requesting a private letter ruling; or
- (c) designated representative of a party described in Subsection (4)(a) or (4)(b).

(5) Information that may be disclosed under Subsection 59-1-404(3) includes:

- (a) the following information related to the property's tax exempt status:
 - (i) information provided on the application for property tax exempt status;
 - (ii) information used in the determination of whether a property tax exemption should be granted or revoked; and
 - (iii) any other information related to a property's property tax exemption;
- (b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:
 - (i) the amount of penalty or interest that is abated;
 - (ii) information provided on an application or request for abatement of penalty or interest;
 - (iii) information used in the determination of the abatement of penalty or interest; and
 - (iv) any other information related to the amount of penalty or interest that is abated; and
- (c) the following information related to the amount of property tax due on property:
 - (i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;
 - (ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and
 - (iii) any other information related to the amount of taxes refunded or deducted under Subsection (5)(c)(i).

(6)(a) Except as provided in statute and Subsection (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside an action or proceeding by any person conducting or participating in any action or proceeding.

(b) Notwithstanding Subsection (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

- (a) If the property taxpayer that provided the commercial

information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under Subsection (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;
2. provide for waiver of initial hearings where requested by any party;
3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;
4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;
5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or
6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

- (i) Chapter 12, Sales and Use Tax Act;
- (ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or
- (iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

- (i) not accompanied by a tax return; or
- (ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

- (i) Chapter 12, Sales and Use Tax Act;
- (ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or
- (iii) Title 69, Chapter 2, Emergency Telephone Service Law.

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by:

- (i) submitting a letter requesting the waiver;
- (ii) providing financial information requested by the commission; and
- (iii) providing a copy of the financial information to the attorney general that is representing the commission in the judicial review.

(b) The financial information described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial information described in Subsection (2), the commission shall:

- (a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or
- (b) if unable to make the determination under Subsection (3)(a) from the financial information, request additional information from the taxpayer as necessary to make that determination.

R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

- (i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;
- (ii) the total tax owed for the period has been paid;
- (iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;
- (iv) the taxpayer has not previously received a waiver review for the same period; and
- (v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

(b) Upon receipt of a waiver request, the commission shall:

- (i) review the request;
- (ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and
- (iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.

(c) Each request for waiver is judged on its individual merits.

(d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act, and commission rules.

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute

reasonable cause for a waiver of penalty:

- (a) Timely Mailing:
 - (i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer.
 - (ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:
 - (A) has an excellent history of compliance;
 - (B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order; and
 - (C) presents documentation showing that the return or payment was mailed timely.
- (b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the wrong office or agency.
- (c) Death or Serious Illness:
 - (i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.
 - (ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.
 - (iii) The death or illness must have occurred on or immediately prior to the due date of the return.
- (d) Unavoidable Absence: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.
- (e) Disaster Relief:
 - (i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.
 - (ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.
 - (iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.
- (f) Reliance on Erroneous Tax Commission Information:
 - (i) Underpayments and late filings or payments were attributable to incorrect advice obtained from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.
 - (ii) Proof of erroneous information may be based on written communication provided by the commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of verbal communication should include the dates, times, and names of commission employees who provided the erroneous information.
 - (iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested the necessary tax forms and instructions timely, and the commission failed to timely provide the forms and instructions requested.
- (g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for filing the return or making the payment, the taxpayer visited a commission office for information or help in preparing the return and a commission employee was not available for consultation.
- (h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.
- (i) Reliance on Competent Tax Advisor:
 - (i) The taxpayer fails to file a return after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised the taxpayer that a return was not required.
 - (ii) The taxpayer is required, and has an obligation, to file the return. Reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. The taxpayer must demonstrate that ordinary business care, prudence, and diligence were exercised in determining

whether to seek further advice.

- (j) First Time Filer:
 - (i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.
 - (ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.
- (k) Bank Error:
 - (i) The taxpayer's bank has made an error in returning a check, making a deposit or transferring money.
 - (ii) A letter from the bank verifying its error is required.
- (l) Compliance History:
 - (i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.
 - (ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.
- (m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any other source.
- (n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change in tax law that the taxpayer could not reasonably be expected to be aware of.
- (4) Other Considerations for Determining Reasonable Cause.
 - (a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
 - (i) whether the commission had to take legal means to collect the taxes;
 - (ii) if the error is caught and corrected by the taxpayer;
 - (iii) the length of time between the event cited and the filing date;
 - (iv) typographical or other written errors; and
 - (v) other factors the commission deems appropriate.
 - (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
 - (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.
 - (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.

- (1) A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if:
 - (a) two commissioners are present at a single anchor location; or
 - (b) one commissioner is present at the anchor location.
- (2) If Subsection (1)(b) applies, the commissioner at the anchor location shall conduct the meeting.
- (3)(a) The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.
- (b) A notice provided under Subsection (3)(a) shall direct the public on how to participate electronically in the meeting.

R861-1A-44. Definition of Delivery Service Pursuant to Utah Code Ann. Section 59-1-1404.

For purposes of determining the date on which a document has been mailed under Section 59-1-1404, "delivery service" means the following delivery services the Internal Revenue Service has determined to be a designated delivery service under

Section 7502, Internal Revenue Code:

- (1) DHL Express (DHL):
 - (a) DHL Same Day Service;
 - (b) DHL Next Day 10:30 a.m.;
 - (c) DHL Next Day 12:00 p.m.;
 - (d) DHL DHL Next Day 3:00 p.m.; and
 - (e) DHL 2nd Day Service;
- (2) Federal Express (FedEx):
 - (a) FedEx Priority Overnight;
 - (b) FedEx Standard Overnight;
 - (c) FedEx 2 Day;
 - (d) FedEx International Priority; and
 - (e) FedEx International First; and
- (3) United Parcel Service (UPS):
 - (a) UPS Next Day Air;
 - (b) UPS Next Day Air Saver;
 - (c) UPS 2nd Day Air;
 - (d) UPS 2nd Day Air A.M.;
 - (e) UPS Worldwide Express Plus; and
 - (f) UPS Worldwide Express.

R861-1A-45. Procedures for Commission Meetings Not Open to the Public Pursuant to Utah Code Ann. Section 59-1-405.

(1) When the commission holds a meeting that is not open to the public pursuant to Section 59-1-405, the commission shall:

- (a) follow the procedures set forth in commission rules:
 - (i) R861-1A-9, Tax Commission as Board of Equalization;
 - (ii) R861-1A-11, Appeal of Corrective Action;
 - (iii) R861-1A-20, Time of Appeal;
 - (iv) R861-1A-22, Petitions for Commencement of Adjudicative Proceedings;
 - (v) R861-1A-23, Designation of Adjudicative Proceedings;
 - (vi) R861-1A-24, Formal Adjudicative Proceedings;
 - (vii) R861-1A-26, Procedures for Formal Adjudicative Proceedings;
 - (viii) R861-1A-27, Discovery;
 - (ix) R861-1A-28, Evidence in Adjudicative Proceedings;
 - (x) R861-1A-29, Decision, Orders, and Reconsideration;
 - (xi) R861-1A-30, Ex Parte Communications;
 - (xii) R861-1A-31, Declaratory Orders;
 - (xiii) R861-1A-32, Mediation Process;
 - (xiv) R861-1A-33, Settlement Agreements;
 - (xv) R861-1A-34, Private Letter Rulings;
 - (xvi) R861-1A-38, Class Actions;
 - (xvii) R861-1A-40, Waiver of Requirement to Post Security Prior to Judicial Review; and
 - (xviii) R861-1A-42, Waiver of Penalty and Interest for Reasonable Cause; and

(b) for all meetings other than initial hearings, or the deliberating and issuing of an order relating to adjudicative proceedings, keep confidential written minutes and a confidential recording of the meeting.

(2) Written minutes of a meeting under Subsection (1)(b) shall include:

- (a) the date, time, and place of the meeting;
- (b) the names of each person present at the meeting;
- (c) the substance of all matters proposed, discussed, or decided by the commission, which may include a summary of comments made by the commissioners;
- (d) a record, by commissioner, of each vote taken by the commission;
- (e) a summary of comments made by a person, other than a commissioner, present at the meeting; and
- (f) any other information that is a record of the proceedings of the meeting that any commissioner requests be entered in the minutes or recording.

(3) Recorded minutes of a meeting under Subsection (1)(b) shall be:

- (a) properly labeled or identified with the date, time, and place of the meeting; and
- (b) a complete and unedited record of the meeting.

R861-1A-46. Procedures for Purchaser Refund Requests Pursuant to Utah Code Ann. Sections 59-1-1410 and 59-12-110.

(1) Definitions.

(a) "Division" means the Auditing Division of the commission.

(b) "Purchaser refund request" means:

- (i) a refund request for sales tax overpaid; and
- (ii) submitted by a person other than the seller that originally collected and remitted the sales tax to the commission.

(c) "Required information and documents" means, for each transaction included in a purchaser refund request:

- (i) a description of the item for which a refund is requested;
- (ii) the invoiced transaction date;
- (iii) the taxable purchase amount;
- (iv) the tax rate applied to the purchase amount;
- (v) the invoice number;
- (vi) invoices or receipts or other books and records that show the items purchased and sales tax charged;
- (vii) the sales tax paid;
- (viii) the reason and basis in Utah law for exempting or excluding the item from sales tax;
- (ix) documentation that verifies that the item qualifies for a sales tax exemption or exclusion;
- (x) the amount of sales tax overpaid;
- (xi) proof of payment of sales tax, such as a canceled check, bank statement, credit card statement or receipt, letter from the seller, or other books and records that demonstrate payment was made;
- (xii) if an agent applies for the refund on behalf of a purchaser, a power of attorney;
- (xiii) the name and address of the seller; and
- (xiv) a signed statement that the seller that calculated and remitted the sales tax:
 - (A) has not provided a sales tax refund or credit; and
 - (B) will not be asked to provide a sales tax refund or credit.

(2)(a) Except as provided in Subsection (3), a person submitting a purchaser refund request shall include the required information and documents with the application to the division.

(b) The items described in Subsection (2)(a) shall be provided to the division in the format and manner prescribed by the division.

(c) If the application is not accompanied by all of the required information and documents, the division shall send a notice to the person that submitted the purchaser refund request.

(d) The notice described in Subsection (2)(c) shall:

- (i) indicate the required information and documents that are missing; and

(ii) allow the person submitting the purchaser refund request 30 days to provide the missing required information and documents to the division.

(e)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (2)(d)(i) within the time period described in Subsection (2)(d)(ii) may contact the division to request an extension of time to provide the required information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall

provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (2)(e)(i).

(f) If the division has not received all of the required information and documents within the time period described in Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e), the division shall:

(i) evaluate the purchaser refund request based solely on the required information and documents received; and

(ii) dismiss for lack of evidence requests for refunds on items for which the division has not received the required information and documents.

(g)(i) Dismissals under Subsection (2)(f) may be appealed to the commission.

(ii) On an appeal under Subsection (2)(g)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e).

(3)(a) A person who submits a purchaser refund request may, at the time the application for the refund is filed, request the division use a sampling method in its review of the purchaser refund request.

(b) A person requesting a sampling method of review under Subsection (3)(a) shall include the following information for each transaction included in the purchaser refund request with the application to the division:

- (i) the invoice number;
- (ii) the invoiced transaction date;
- (iii) the taxable purchase amount;
- (iv) the tax rate applied to the purchase amount;
- (v) the sales tax paid;
- (vi) the amount of sales tax overpaid;
- (vii) the name and address of the seller
- (viii) a description of the item for which a refund is requested; and

(ix) the reason and basis in Utah law the item is exempt or excluded from sales tax.

(c) The items described in Subsection (3)(b) shall be provided to the division in the format and manner prescribed by the division.

(4)(a) If the division and a person submitting a purchaser refund request agree to the division's use of a sampling method in its review of the purchaser refund request, the division shall:

(i) determine the items that will be included in the sample;

(ii) notify the person submitting the purchaser refund request of the items that will be included in the sample and the information and documents that must be submitted to the division; and

(iii) allow the person submitting the purchaser refund request 30 days to provide the information and documents to the division in the format and manner prescribed by the division.

(b)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (4)(a)(ii) within the time period described in Subsection (4)(a)(iii) may contact the division to request an extension of time to provide the information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (4)(b)(i).

(c) Information and documents described in Subsection (4)(a)(ii) that are not received by the end of the period described in Subsection(4)(a), or if applicable, within an extension of time

granted under Subsection (4)(b), shall be:

(i) considered errors; and

(ii) included in the overall error factor by which the purchaser refund request is decreased.

(d)(i) Errors under Subsection (4)(c) may be appealed to the commission.

(ii) On an appeal under Subsection (4)(d)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (4)(a), or if applicable, within an extension of time granted under Subsection (4)(b).

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements

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68-3-8.5
69-2-5
42 USC 12201
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R865. Tax Commission, Auditing.**R865-6F. Franchise Tax.****R865-6F-1. Corporation Franchise Privilege - Right to Do Business - Nature of Liability and How Terminated Pursuant to Utah Code Ann. Sections 16-10a-1501 through 16-10a-1533.**

A. The Utah franchise tax is imposed upon corporations qualified or incorporated under the laws of Utah, whether or not they do business therein, and also upon corporations doing business in Utah, whether or not they are qualified or incorporated under the laws of Utah.

1. An unqualified foreign corporation doing business in this state is liable for Utah corporation franchise tax in the same amount as if it had duly applied for and received a certificate of authority to transact business in this state pursuant to Section 16-10a-1501.

2. An unqualified foreign corporation deriving income from this state, but not doing business in this state within the contemplation of the Utah corporation franchise tax law is subject to the Utah corporation income tax on income derived from this state under the provisions of Sections 59-7-201 to 59-7-207.

B. If a corporation received its corporate authority to do business in Utah prior to January 1, 1973, and is a member of an affiliated group filing a combined report under Section 59-7-402 or 59-7-403, and legally terminates its corporate authority, it must include its activity during the final year in the combined report of the group. The tax is imposed upon the income of the group rather than the income of the individual corporations.

C. A corporation that was incorporated, qualified, or that reinstated its corporate authority to do business in Utah after January 1, 1973 must file a corporation franchise tax return and pay the tax due with the return for the year in which it legally terminates its right to do business in this state. The Tax Commission shall not issue a tax clearance certificate until the final return has been filed and the amounts due for the final year are paid.

D. For Utah corporation franchise tax purposes, a foreign corporation terminates its corporate existence or the privileges for which the franchise tax is levied (unless it continues to do business) on the date on which:

1. a certificate of withdrawal is issued under the provisions of Section 16-10a-1520;

2. its corporate existence is legally terminated in its home state, provided authoritative evidence of that termination is filed;

3. a certificate of revocation of its authority to transact business in this state is issued under the provisions of Sections 16-10a-1530 and 16-10a-1531; or

4. the corporate powers, rights, and privileges are forfeited under the provisions of Section 59-7-534.

E. For Utah corporation franchise tax purposes, a corporation that is incorporated under the laws of this state terminates its corporate existence or the privilege of exercising its corporate franchise for which the franchise tax is levied on the date on which:

1. a certificate of dissolution is issued pursuant to a voluntary dissolution under the provisions of Section 16-10a-1401 or Sections 16-10a-1402 through 16-10a-1403;

2. a decree of dissolution is entered by the court pursuant to the provisions of Sections 16-10a-1430 through 16-10a-1433;

3. a certificate of merger or of consolidation (which effects the termination of the separate corporate existence of the Utah corporation) is issued pursuant to the provisions of Sections 16-10a-1101 through 16-10a-1107; or

4. the corporate rights and privileges are suspended under the provisions of Section 59-7-534.

F. If the corporation continues to do business in this state subsequent to any of the above dates, it is liable for franchise

tax, even though doing business is not authorized, or may even be prohibited, by law. A corporation cannot avoid the franchise tax by doing business without authority which, if legally done, would subject the corporation to the tax.

R865-6F-2. Establishment of Taxable Year and Filing the First Return Pursuant to Utah Code Ann. Sections 59-7-501 and 59-7-505.

A. The period for which a corporation must file its returns for corporation franchise tax purposes is the same period under which its income is computed pursuant to Section 59-7-501.

B. The first return may cover a period of less than 12-calendar months, but may not exceed 12-calendar months. The period must end on the last day of a calendar month, except that the Tax Commission will accept returns being made using the 52-53 week method of reporting under Section 441(f), Internal Revenue Code.

C. If a corporation elects for federal purposes to end its filing period on a date that does not fall on the last day of a calendar month, the filing period for the purposes of effective dates of Utah laws ends on the last day of the month nearest to the federal year end. The Utah net income is computed based on the filing period for federal purposes, notwithstanding the Utah filing period ends on the last day of the month.

D. Except as provided in Section 59-7-505(8)(a), in the case of a domestic corporation, the first return period begins with the date of incorporation. Activity prior to date of incorporation must be reported on individual income or partnership returns or of such other entity as may be appropriate.

E. Except as provided in Section 59-7-505(8)(a), in the case of a foreign corporation, the first return period begins with the date the corporation is qualified to do business in Utah under Title 16, Chapter 10a, Part 15, or the date business within the state is commenced, whichever is the earlier.

R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.

(1) Definitions.

(a) "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

(b) "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

(c) "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

(i) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

(ii) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

(iii) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered

as advertising or otherwise publicly attributing an office to the company or its employee or representative.

(d) "Solicitation" means:

(i) speech or conduct that explicitly or implicitly invites an order; and

(ii) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

(2) Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

(3) Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

(a) they maintain no office nor stocks of goods in Utah, and

(b) they engage in no other activities in Utah.

(4) Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

(5) Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

(6) Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

(7) Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

(8) Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

(9) Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

(10) P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to Subsection 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

(a) Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing,

renting licensing or other disposition of tangible personal property, or transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

(b) For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

(11) The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

(a) making repairs or providing maintenance or service to the property sold or to be sold;

(b) collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

(c) investigating credit worthiness;

(d) installation or supervision of installation at or after shipment or delivery;

(e) conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

(f) providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders;

(g) investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

(h) approving or accepting orders;

(i) repossessing property;

(j) securing deposits on sales;

(k) picking up or replacing damaged or returned property;

(l) hiring, training, or supervising personnel, other than personnel involved only in solicitation;

(m) using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

(n) maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

(o) carrying samples for sale, exchange or distribution in any manner for consideration or other value;

(p) owning, leasing, using, or maintaining any of the following facilities or property in-state:

(i) repair shop;

(ii) parts department;

(iii) any kind of office other than an in-home office;

(iv) warehouse;

(v) meeting place for directors, officers, or employees;

(vi) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

(vii) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

(viii) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

(ix) real property or fixtures to real property of any kind;

(q) consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

(r) maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

(i) the maintenance of any office or other place of business in this state that does not strictly qualify as an in-home office under this subsection shall, by itself cause the loss of protection under this rule;

(ii) for purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office;

(s) entering into franchising or licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

(t) conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

(12) The following in-state activities will not cause the loss of protection for otherwise protected sales;

(a) soliciting orders for sales by any type of advertising;

(b) soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

(c) carrying samples and promotional materials only for display or distribution without charge or other consideration;

(d) furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

(e) providing automobiles to sales personnel for their use in conducting protected activities;

(f) passing orders, inquiries and complaints on to the home office;

(g) missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

(h) coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

(i) checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

(j) maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

(k) recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

(l) mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

(m) owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

(13) P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

(a) Independent contractors may engage in the following limited activities in the state without the company's loss of immunity;

(i) soliciting sales;

(ii) making sales;

(iii) maintaining an office.

(b) Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and this rule.

(c) Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

(14) The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of Subsection 59-7-318(2) will apply.

(15) The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

(16) A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

(17) The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

R865-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Allocation" means the assignment of nonbusiness income to a particular state.

(b) "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

(c) "Base of operations" means the place of more or less permanent nature from which the employee starts work and to which the employee customarily returns in order to receive instructions from the taxpayer or communications from customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other function necessary to the exercise of his trade or profession at some other point or points.

(d) "Business activity" refers to the transactions and activities occurring in the regular course of a particular trade or business of a taxpayer, or to the acquisition, management, and disposition of property that constitute integral parts of the taxpayer's regular trade or business operations.

(e) "Business income" means income of any type or class, and from any activity, that meets the relationship described in Subsection (2)(b), the transactional test, or Subsection (2)(c), the functional test. The classification of income by the labels occasionally used, such as manufacturing income, compensation

for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income is of no aid in determining whether income is business or nonbusiness income.

(f) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(g) "Employee" means an:

(i) officer of a corporation; or

(ii) individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(h) "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold.

(i) Gross receipts, even if business income, do not include such items as, for example:

(A) repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;

(B) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(C) proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;

(D) damages and other amounts received as the result of litigation;

(E) property acquired by an agent on behalf of another;

(F) tax refunds and other tax benefit recoveries;

(G) pension reversions;

(H) contributions to capital (except for sales of securities by securities dealers);

(I) income from forgiveness of indebtedness; or

(J) amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

(ii) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of Subsection (11).

(i) "Nonbusiness income" means all income other than business income.

(j) "Place from which the service is directed or controlled" means the place from which the power to direct or control is exercised by the taxpayer.

(k) "Taxpayer" means a corporation as defined in Section 59-7-101.

(l) "To contribute materially" includes being used operationally in the taxpayer's trade or business. Whether property contributes materially is not determined by reference to the property's value or percentage of use. If an item of property contributes materially to the taxpayer's trade or business, the attributes, rights, or components of that property are also operationally used in that business. However, property that is held for mere financial betterment is not operationally used in the taxpayer's trade or business.

(m) "Trade or business" means the unitary business of the taxpayer, part of which is conducted within Utah.

(2) Business and Nonbusiness Income.

(a) Apportionment and Allocation. Section 59-7-303 requires that every item of income be classified as either business income or nonbusiness income. Income for purposes of classification as business or nonbusiness includes gains and

losses. Business income is apportioned among jurisdictions by use of a formula. Nonbusiness income is specifically assigned or allocated to one or more specific jurisdictions pursuant to express rules. An item of income is classified as business income if it falls within the definition of business income. An item of income is nonbusiness income only if it does not meet the definitional requirements for being classified as business income.

(b) Transactional Test. Business income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business.

(i) If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within the state, the resulting income of the transaction or activity is business income for Utah purposes. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in this state.

(ii) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted, or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, those activities do not satisfy the transactional test. The transactional test includes income from sales of inventory, property held for sale to customers, and services commonly sold by the trade or business. The transactional test also includes income from the sale of property used in the production of business income of a kind that is sold and replaced with some regularity, even if replaced less frequently than once a year.

(c) Functional Test. Business income also includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(i) The following definitions apply to this Subsection (2)(c).

(A) "Acquisition" means the act of obtaining an interest in property.

(B) "Disposition" means the act, or the power, of relinquishing or transferring an interest in or control over property to another, either in whole or in part.

(C) "Integral part" means property that constitutes a part of the composite whole of the trade or business, each part of which gives value to every other part, in a manner that materially contributes to the production of business income.

(D) "Management" means the oversight, direction, or control, whether directly or by delegation, of the property for the use or benefit of the trade or business.

(E) "Property" includes an interest in, control over, or use of property, whether the interest is held directly, beneficially, by contract, or otherwise, that materially contributes to the production of business income.

(ii) Under the functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It is sufficient, if the property from which the income is derived is or was an integral, functional, or operative component used in the taxpayer's trade or business operations, or otherwise materially contributed to the production of business income of the trade or business, part of which trade or business is or was conducted

within the state. Property that has been converted to nonbusiness use through the passage of a sufficiently lengthy period of time, generally five years, or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes, has lost its character as a business asset and is not subject to this subsection. Property that was an integral part of the trade or business is not considered converted to investment purposes merely because it is placed for sale.

(iii) Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation or the winding-up of business, is business income if the property is or was used in the taxpayer's trade or business operations.

(A) Property that has been converted to nonbusiness use has lost its character as a business asset and is not subject to Subsection (2)(c)(iii).

(B) Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business operations, constitutes business income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

(iv) Under the functional test, income from intangible property is business income when the intangible property serves an operational function as opposed to solely an investment function. The relevant inquiry focuses on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of the property is limited to solely an investment function as is the case where the holding of the property is limited to mere financial betterment of the taxpayer in general.

(v) If the property is or was held in furtherance of the taxpayer's trade or business beyond mere financial betterment, income from that property may be business income even though the actual transaction or activity involving the property that gives rise to the income does not occur in this state.

(vi) If with respect to an item of property a taxpayer takes a deduction from business income that is apportioned to this state, or includes the original cost in the property factor, it is presumed that the item of property is or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of these actions.

(vii) Application of the functional test is generally unaffected by the form of the property, whether tangible or intangible, real or personal. Income arising from an intangible interest, for example, corporate stock or other intangible interest in a business or a group of assets, is business income when the intangible itself or the property underlying or associated with the intangible is or was an integral, functional, or operative component of the taxpayer's trade or business operations.

(A) Property that has been converted to nonbusiness use has lost its character as a business asset and is not subject to this Subsection (2)(c)(vii).

(B) While apportionment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, that is, the same unitary business, establishment of that relationship is not the exclusive basis for concluding that the income is subject to apportionment.

(C) It is sufficient to support the finding of apportionable income if the holding of the intangible interest served an

operational rather than an investment function of mere financial betterment.

(d) Relationship of Transactional Test and Functional Tests to the United States Constitution.

(i) The due process clause and the commerce clause of the United States Constitution restrict states from apportioning income as business income that has no rational relationship with the taxing state. The protection against extra-territorial state taxation afforded by these clauses is often described as the unitary business principle. The unitary business principle requires apportionable income to be derived from the same unitary business that is being conducted as least in part in the state.

(ii) The unitary business conducted in this state includes both a unitary business that the taxpayer alone may be conducting and a unitary business the taxpayer may conduct with any other person. Satisfaction of either the transactional test or the functional test complies with the unitary business principle, because each test requires that the transaction or activity, in the case of the transactional test, or the property, in the case of the functional test, to be tied to the same trade or business that is conducted within the state. Determination of the scope of the unitary business conducted in the state is without regard to the extent to which this state requires or permits combined reporting.

(e) Business and Nonbusiness Income Application of Definitions.

(i) Rents From Real and Tangible Personal Property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is or was used in the taxpayer's trade or business and therefore is includable in the property factor under Subsection (8)(a)(i). Property that has been converted to nonbusiness use has lost its character as a business asset and is not subject to this subsection.

(ii) Gains or Losses From Sales of Assets. Gain or loss from the sale, exchange, or other disposition of real property or of tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in, or was otherwise included in the property factor of the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income or it was previously included in the property factor and later removed from the property factor before its sale, exchange, or other disposition, the gain or loss constitutes nonbusiness income. See Subsection (8)(a)(ii).

(iii) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations, or where the purpose for acquiring and holding the intangible is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

(iv) Dividends. Dividends are business income where the stock with respect to which the dividends were received arose out of or was acquired in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the stock is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

(v) Patent and Copyright Royalties. Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arose out of or was created in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the patent or copyright is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise

materially contributes to the production of business income of the trade or business operations.

(vi) Proration of Deductions. In most cases, an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases, an allowable deduction may be applicable to the business incomes of more than one trade or business or several items of nonbusiness income. In those cases, the deduction shall be prorated among those trades or businesses and those items of nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

(f)(i) A schedule must be submitted with the return showing the:

(A) gross income from each class of income being allocated;

(B) amount of each class of applicable expenses, together with explanation or computations showing how amounts were arrived at;

(C) total amount of the applicable expenses for each income class; and

(D) net income of each income class.

(ii) The schedule shall indicate items of income and expenses allocated both to the state and outside the state.

(g) Year to Year Consistency. In filing returns with the state, if the taxpayer departs from or modifies the manner of prorating any deduction used in returns for prior years in a material way, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(h) State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of any material variance.

(3) Unitary Business.

(a) Unitary Business Principle.

(i) The Concept of a Unitary Business. A unitary business is a single economic enterprise that is made up of either separate parts of a single business entity or a group of business entities related through common ownership that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This flow of value to a business entity located in this state that comes from being part of a unitary business conducted both within and without the state is what provides the constitutional due process definite link and minimum connection necessary for the state to apportion business income of the unitary business, even if that income arises in part from activities conducted outside the state. The business income of the unitary business is then apportioned to this state using an apportionment percentage provided by Section 59-7-311. This sharing or exchange of value may also be described as requiring that the operation of one part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one business either contribute to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business.

(ii) Constitutional Requirement for a Unitary Business. The sharing or exchange of value described in Subsection (3)(a)(i) that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business. In this state, the unitary business principle shall be applied to the fullest extent allowed

by the United States Constitution. The unitary business principle shall not be applied to result in the combination of business activities or entities under circumstances where, if it were adverse to the taxpayer, the combination of those activities or entities would not be allowed by the United States Constitution.

(iii) Separate Trades or Businesses Conducted Within a Single Entity. A single entity may have more than one unitary business. In those cases, it is necessary to determine the business, or apportionable, income attributable to each separate unitary business as well as its nonbusiness income, which is specifically allocated. The business income of each unitary business is then apportioned by a formula that takes into consideration the in-state and out-of-state factors that relate to the respective unitary business whose income is being apportioned.

(iv) Unitary Business Unaffected by Formal Business Organization. A unitary business may exist within a single business entity or among a group of business entities related through common ownership, as defined in Section 59-7-101.

(b) Determination of a Unitary Business.

(i) A unitary business is characterized by significant flows of value evidenced by factors such as those described in *Mobil Oil Corp. v. Vermont*, 445 US 425 (1980): functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular characteristic of a business operation may be suggestive of one or more of the factors mentioned above.

(ii) Description and Illustration of Functional Integration, Centralization of Management, and Economies of Scale.

(A) Functional Integration. Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that support the finding of functional integration. The order of the list does not establish a hierarchy of importance.

(I) Sales, Exchanges, or Transfers. Sales, exchanges, or transfers (collectively "sales") of products, services, and intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold and the percentage of total sales or purchases represented by the intercompany sales. For example, sales among business entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to affect the intercompany sales, because those sales can represent an assured market for the seller or an assured source of supply for the purchaser.

(II) Common Marketing. The sharing of common marketing features among business entities is an indication of functional integration when the marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the business entities' products, services, or intangibles are distributed or sold to a common customer, when the business entities use a common trade name or other common identification, or when the business entities seek to identify themselves to their customers as a member of the same

enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. That activity, however, is relevant to determining the existence of economies of scale and centralization of management.

(III) Transfer or Pooling of Technical Information or Intellectual Property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development provide evidence of functional integration when the matter transferred is significant to the businesses' operations.

(IV) Common Distribution System. Use of a common distribution system by the business entities, under which inventory control and accounting, storage, trafficking, or transportation are controlled through a common network provides evidence of functional integration.

(V) Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the business entities, particularly where the purchasing results in significant cost savings and is significant to each entity's operations or sales, provides evidence of functional integration.

(VI) Common or Intercompany Financing. Significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one or more business entities for the benefit of another business entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending that serves an investment purpose of the lender does not necessarily provide evidence of functional integration.

(B) Centralization of Management. Centralization of management exists when directors, officers, and other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one subsidiary entity to another, from one division within a single business entity to another division within a business entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect to the business activities. An operational role may be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management.

(I) Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management may exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors.

(II) Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one or more significant operating aspects of one business activity with the other business activities

of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight.

(C) Economies of Scale. Economies of scale refers to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that support the finding of economies of scale. The order of the list does not establish a hierarchy of importance.

(I) Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale.

(II) Centralized Administrative Functions. The performance of traditional corporate administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. A business entity that secures savings in the performance of corporate administrative services due to its affiliation with other business entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market provides evidence of economies of scale.

(c) Indicators of a Unitary Business.

(i) Business activities that are in the same general line of business generally constitute a single unitary business, as for example, a multistate grocery chain.

(ii) Business activities that are part of different steps in a vertically structured business almost always constitute a single unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the business's executive offices.

(iii) Business activities that might otherwise be considered as part of more than one unitary business may constitute one unitary business when the factors outlined in Subsection (3)(b) are present. For example, some businesses conducting diverse lines of business may properly be considered as engaged in only one unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices that perform for the business the normal matters a truly independent business would perform for itself, such as personnel, purchasing, advertising, or financing.

(4) Apportionment and Allocation.

(a)(i) If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

(ii) For purposes of determining the fraction by which business income shall be apportioned to this state under Section 59-7-311:

(A) If a taxpayer makes an election to calculate its apportionment fraction under Subsection 59-7-311(2)(a) and one or more of the factors listed in Subsection 59-7-311(2)(a)(i) is missing, the fraction by which business income shall be apportioned to the state shall be determined by adding the

factors present and dividing that sum by the number of factors present.

(B) If a taxpayer makes an election to double weight the sales factor under Subsection 59-7-311(2)(b) and one or more of the factors listed in Subsection 59-7-311(2)(b)(i) is missing, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors as provided in subsection 59-7-311(2)(b)(i), and dividing that sum by the denominator indicated in Subsection 59-7-311(2)(b)(ii), reduced by the sum of one if the property factor is missing, one if the payroll factor is missing, and two if the sales factor is missing.

(C) For a taxable year that begins on or after January 1, 2011, but begins on or before December 31, 2011, in the case of a sales factor weighted taxpayer, if one or more of the factors listed in Subsection 59-7-311(3)(a)(i) is missing and if the sales factor is present, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors as provided in Subsection 59-7-311(3)(a)(i), and dividing that sum by the denominator, indicated in Subsection 59-7-311(3)(a)(ii), reduced by the number of missing factors.

(D) For a taxable year that begins on or after January 1, 2012, but begins on or before December 31, 2012, in the case of a sales factor weighted taxpayer, if one or more of the factors listed in Subsection 59-7-311(3)(b)(i) is missing and if the sales factor is present, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors as provided in Subsection 59-7-311(3)(b)(i), and dividing that sum by the denominator, indicated in Subsection 59-7-311(3)(b)(ii), reduced by the number of missing factors.

(b) Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

(5) Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(6) Taxable in Another State.

(a) In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

(i) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(ii) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business.

(b) When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state

and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

(i) does not actually engage in business activity in that state, or

(ii) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

(c) When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302, other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

(7) Apportionment Formula. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor, see Subsection (8), the payroll factor, see Subsection (9), and the sales factor, see Subsection (10) of the trade or business of the taxpayer. For exceptions see Subsection (11).

(8) Property Factor.

(a) In General.

(i) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

(ii) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

(iii) The property factor shall reflect the average value of property includable in the factor. Refer to Subsection (8)(g).

(b) Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or

property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time, normally five years, during which the property is no longer held for use in the trade or business.

(c) Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) Property Factor Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

(e) Valuation of Owned Property.

(i) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

(ii) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

(iii) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

(f) Valuation of Rented Property.

(i) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid

by subtenants of the taxpayer. See Subsection (11)(b) for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

(ii) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

(iii) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

(iv) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

(v) Annual rent does not include:

(A) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(B) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

(vi) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

(g) Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

(i) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

(ii) Example: The monthly value of the taxpayer's property was as follows:

TABLE

January	\$2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	\$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:
 $\$120,000 / 12 = \$10,000$

(iii) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in Subsection (8)(g).

(9) Payroll Factor.

(a) The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(b) The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

(c) Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded from the payroll factor. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

(d) Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

(e)(A) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(B) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(f) Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

(g) Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the

taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under this Subsection (9). The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

(h) Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

(i) The employee's service is performed entirely within the state.

(ii) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's base of operations is in this state; or

(B) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(C) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

(10) Sales Factor. In General.

(a) Section 59-7-302 defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

(i) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

(ii) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

(iii) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

(iv) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the

rental, lease or licensing of the use of the property.

(v) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

(vi) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(vii) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See Subsection (11)(c).

(viii) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(ix) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Subsection (11)(d).

(c) Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(d) Sales of Tangible Personal Property in this State.

(i) Gross receipts from the sales of tangible personal property (except sales to the United States government; see Subsection (10)(e)) are in this state:

(A) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or

(B) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

(ii) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

(iii) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

(iv) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

(v) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

(vi) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

(vii) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped

directly by a third party to the purchaser, the following rules apply:

(A) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(B) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

(e)(i) Sales of Tangible Personal Property to United States Government in this state.

(ii) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

(f)(i) Sales Other than Sales of Tangible Personal Property in this State.

(ii) In general, Subsections 59-7-319(2) through (7) provide for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government).

(g) Receipts from the Performance of Services.

(i) Under Subsection 59-7-319(3), gross receipts from the performance of a service are considered to be in this state if the purchaser of the service receives a greater benefit of the service in this state than in any other state. In general, the "benefit of the service" approach under the statute reflects a market based approach, and the greater benefit of the service is typically received in the state in which the market for the service exists and where the purchaser is located.

(ii) For businesses engaged in certain industries, specific sourcing rules and guidelines that address the attribution of gross receipts from the performance of a service have been adopted. See Subsection (11)(b).

(iii) The benefit from performance of a service is in this state if any of the following conditions are met:

(A) The service relates to tangible personal property and is performed at a purchaser's location in this state.

(B) The service relates to tangible personal property that the service provider delivers directly or indirectly to a purchaser in this state after the service is performed.

(C) The service is provided to an individual who is physically present in this state at the time the service is received.

(D) The service is provided to a purchaser exclusively engaged in a trade or business in this state and relates to that purchaser's business in this state.

(E) The service is provided to a purchaser that is present in this state and the service relates to that purchaser's activities in this state.

(iv) If the benefit of the service is received in more than one state, the gross receipts from the service are to be sourced using reasonable and consistent methods of analysis to determine in which state the greater benefit of the service is received. Such methods must be supported by the service provider's business records at the time the service was provided. If the benefit of a service is received in Utah and one or more other states and the state where the greater benefit of the service is received cannot otherwise be readily determined through the provisions of this rule, the following sourcing rules are applied in sequential order:

(A) The receipt is sourced to this state if the office from which the purchaser placed the order for the service is in this state.

(B) If the office from which the order was placed cannot be determined, the receipt is sourced to this state if the

purchaser's billing address is in this state.

(C) If the state of the purchaser's billing address cannot be determined, the receipt shall be included in the sales factor in this state.

(v) The term, "gross receipt from the performance of a service" applies to each individual sales transaction, and each sales transaction is considered a discrete transaction for purposes of determining whether the purchaser of the service receives a greater benefit of the service in this state than in any other state.

(vi) In determining whether the greater benefit from the performance of a service is received in this state, the benefit of the service in this state must be compared to the benefit of the service received in each individual state in which any benefit of the service is received, i.e., the benefit of the service received in Utah is not compared to the benefit of the service received in all other states combined.

(vii) In the context of a combined report, the sale of services between members of a unitary group included in a combined report shall be excluded from the combined report sales factor.

(viii) The following examples are provided to illustrate the application of Utah law in regard to receipts from the performance of a service:

(A) A company headquartered and primarily conducting business in Utah contracts for general accounting services with an accounting firm located in another state. The receipts for the accounting service are sourced to Utah regardless of where the services are performed, since the greater benefit of the services is received in this state.

(B) A Utah retailer hires a California agency to develop an advertising campaign targeting its Utah customers. The receipts for the advertising services are sourced to Utah regardless of where the services are actually performed.

(C) A multistate company hires a Colorado firm to perform an appraisal of its business properties in Utah and Colorado. The company has several locations in Utah. However, the headquarters of the company is in Colorado and the value of its properties located in Colorado exceed the value of its properties in Utah. The appraisal fee is not broken down by location of the assets or properties of the company. Use of the property values for each state to determine where the greater benefit of the appraisal services occurred is a reasonable method to determine where the appraisal service fees should be sourced and the service would be sourced to Colorado. However, if the appraisal fees are broken out separately for Colorado and Utah properties or the billing information by state is known, the appraisal fees pertaining to the Utah properties are sourced to Utah and the appraisal fees pertaining to the Colorado properties are sourced to Colorado.

(D) An Internet/cable television service provider provides services to purchasers in Utah as well as other surrounding states. As all of the benefit from the services provided to Utah purchasers is received at residences or business locations in Utah, the receipts from the services provided to Utah purchasers are sourced to Utah.

(E) Data processing services are performed for a company conducting interstate business. The services relate to computer systems that are mainly located in Utah although a few terminals are spread over several other states. Since the data processing services relate to the computer systems that are mainly located in Utah, the greater benefit of the service is considered to be received in Utah and the receipts from the services are sourced to Utah regardless of where the services are actually performed. The location of data processing equipment associated with the data processing services is a reasonable method of sourcing receipts from those services.

(F) Engineering services are performed in connection with a property being constructed in Utah. Since all of the benefit of

the service is received in Utah where the construction takes place, the receipts from the engineering services are sourced to Utah regardless of where the actual engineering services are performed.

(G) A California law firm is retained to represent multiple plaintiffs in a class action lawsuit filed against a Utah corporation in a Utah court. Receipts received by the firm for the legal services are sourced to Utah notwithstanding the fact that some of the services were performed outside Utah. The greater benefit of the services is received in Utah since the lawsuit was filed against a Utah corporation in a Utah court.

(H) A moving company performs a moving service for an individual that has been transferred from New Jersey to Utah. The charges for services in connection with the move and unpacking services are sourced to Utah because the greater benefit of the moving services is received by the purchaser in the state to which the property is moved. However, any charges for specific services such as storage or packing that are performed outside of Utah, and that are separately stated, are not sourced to Utah.

(I) A car rental agency rents a vehicle that is picked up from and returned to one of its business locations in Utah. The receipts from the rental are sourced to Utah regardless of whether the vehicle leaves this state for the duration of the rental period.

(11) Special Rules:

(a) Section 59-7-320 provides that if the allocation and apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (i) separate accounting;
 - (ii) the exclusion of any one or more of the factors;
 - (iii) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or
 - (iv) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.
- (b) For businesses engaged in one or more of the following industries, specific statutes, rules, and guidelines have been adopted:
- (i) airlines see Sections 59-7-312, 59-7-315, and 59-7-317;
 - (ii) financial institutions see rule R865-6F-32;
 - (iii) long term construction contractors see rule R865-6F-16;
 - (iv) publishing companies see rule R865-6F-31;
 - (v) railroads see rule R865-6F-29;
 - (vi) registered securities or commodities brokers and dealers see rule R865-6F-36;
 - (vii) telecommunications companies see rule R865-6F-33; and
 - (viii) trucking companies see rule R865-6F-19; and
 - (ix) businesses or affiliates of businesses providing services to a regulated investment company see Section 59-7-319.

(c) Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

(i) If the subrents taken into account in determining the net annual rental rate under Subsection (8)(f)(i) produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market

value of the rented property.

(ii) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

(d) Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

(i) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(ii) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

(iii) Where intangible property generates business income and the state in which that intangible property is being used can be determined, that income is included in the denominator of the sales factor and, if and to the extent that property is used in this state, in the numerator of the sales factor as well. For example, usually the state in which the intangible property is being used can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Subsection (10)(a)(i), and income from the sale, licensing or other use of intangible personal property.

(A) Where intangible property generates business income and the state in which that intangible property is being used cannot be determined, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(B) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

(iv) Where gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions under Subsections (11)(d)(i) through (iii), such gains or losses shall be treated as provided in this Subsection (11)(d)(iv). This Subsection (11)(d)(iv) does not provide rules relating to the treatment of other receipts produced from holding or managing such assets.

(A) If a taxpayer holds liquid assets in connection with one or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of this Subsection (11)(d)(iv), each treasury function will be considered separately.

(B) For purposes of this Subsection (11)(d)(iv), a liquid asset is an asset (other than functional currency or funds held in bank accounts) held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include:

(I) foreign currency (and trading positions therein) other than functional currency used in the regular course of the taxpayer's trade or business;

(II) marketable instruments (including stocks, bonds, debentures, options, warrants, futures contracts, etc.); and

(III) mutual funds which hold such liquid assets.

(C) An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation which is unitary with the taxpayer, or which has a substantial business relationship with the taxpayer, is not considered marketable stock.

(D) For purposes of this Subsection (11)(d)(iv)(D), a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, business acquisitions, etc. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

(E) Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

(e) Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

(f) Partnership or Joint Venture Income. Income or loss from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-501, and 59-7-502.

(1) It is the policy of the commission, in matters involving the determination of income for Utah corporation franchise tax purposes, to follow as closely as possible federal requirements with respect to the same matters. In some instances the federal and state statutes differ, and as a result the federal rulings, regulations, and decisions may not be followed. Furthermore, in some instances, the commission may disagree with the federal determinations and does not consider them controlling for Utah corporation franchise tax purposes.

(2) The items of major importance ordinarily allowed in conformity with federal requirements are:

- (a) depreciation,
- (b) depletion,
- (c) exploration and development expenses,
- (d) intangible drilling costs,
- (e) accounting methods and periods, and
- (f) Subpart F income.

(3) The following are the major items that require different treatment under the state and federal statutes:

- (a) combined reporting,
- (b) consolidated returns,
- (c) dividends received deduction,
- (d) municipal bond interest,
- (e) capital loss deduction,
- (f) loss carry-overs and carry-backs, and
- (g) gross-up on foreign dividends.

R865-6F-15. Installment Basis of Reporting Income in Year

of Termination Pursuant to Utah Code Ann. Section 59-7-112.

A. The Corporation Franchise Tax Act allows a corporation, under certain conditions and under rules prescribed by the Tax Commission, to report income arising from the sale or other disposition of property on a deferred or so-called installment basis. Thus, a gain technically realized at the time the sale is made may, at the election of the taxpayer, be reported on a deferred basis in accordance with the law and the following sections of this rule. The rule allowing deferment of reporting such income is only one of postponement of the tax, and not one of exemption from a tax otherwise lawfully due. Thus, the privilege of deferment is terminated if the taxpayer ceases to be subject to tax prior to the reporting of the entire amount of installment income. When a taxpayer elects to report income arising from the sale or other disposition of property as provided in Section 59-7-112, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed under the Utah Corporation Income and Franchise Tax Acts, the unreported income is included in the return for the last year in which the taxpayer is subject to the tax. This rule applies to all corporations which elect to report on the installment basis. If a corporation on this basis desires to dissolve or to withdraw, it must comply with the provisions hereof prior to issuance of the tax clearance certificate.

B. Income reported under the provisions of Section 59-7-112 and this rule shall be subject to the same treatment in the allocation of income; i.e., specific allocation or apportionment, as would have been accorded the original income from the sale under the provisions of the Uniform Division of Income for Tax Purposes Act. In case such income is subject to apportionment, the apportionment fraction for the year in which the income is reported applies rather than the year in which the sale was made.

R865-6F-16. Apportionment of Income of Long-Term Construction Contractors Pursuant to Utah Code Ann. Sections 59-7-302 through 321.

(1) When a taxpayer elects to use the percentage-of-completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from such long-term contracts from sources within this state is determined pursuant to this rule.

(2) Business income is apportioned to this state by a three-factor formula consisting of property, payroll, and sales--regardless of the method of accounting for long-term contracts elected by the taxpayer. The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(a) Percentage-of-completion method. Under this method of accounting for long-term contracts, the amount included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract completed during the income years) exceeds all expenditures made during the income year in connection with the contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures.

(b) Completed-contract method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is completed. A special computation is required to compute the amount of business income attributable to this state from each completed contract. All receipts and expenditures applicable to the contracts, whether complete or incomplete at the end of the

income year, are excluded from other business income, which are apportioned by the regular three-factor formula of property, payroll, and sales.

(3) Property factor. In general, the numerator and denominator of the property factor is determined as set forth in Sections 59-7-312, 59-7-313, and 59-7-314 and the rules thereunder. However, the following special rules are also applicable:

(a) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent these costs exceed progress billings, are included in the denominator of the property factor. The value of those construction costs attributable to construction projects in this state are included in the numerator of the property factor. It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

(b) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though the rental expense may be capitalized into the cost of construction.

(c) The property factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed-contract method of accounting business income is computed separately.

(4) Payroll factor. In general, the numerator and denominator of the payroll factor are determined as set forth in Sections 59-7-315 and 59-7-316 and the rules thereunder. However, the following special rules are also applicable.

(a) Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(b) Compensation paid to employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, is attributed to the state where the services are performed. For example, a taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Section 59-7-316 and the rule thereunder, the compensation is assigned to the numerator of State X.

(c) The payroll factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed contract method of accounting, business income is computed separately.

(5) Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Sections 59-7-317, 59-7-318, and 59-7-319 and the rules thereunder. However, the following special rules are also applicable.

(a) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the coming year bears to the total of such construction costs for the entire project during the income year. Progress billings are ordinarily used to reflect gross receipts and must be shown in both the numerator and denominator of the sales factor.

(b) If the percentage-of-completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. For example, a construction contractor which had elected the percentage-of-completion method of accounting entered into a \$9,000,000

long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30 percent completed. The amount of gross receipts included in the sales factor for the current income year is \$2,700,000 (30 percent of \$9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

(c) If the completed-contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received under the cash basis or accrued, whichever is applicable, during the income year attributable to each contract. For example, a construction contractor which elected the completed-contract method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it had billed, and accrued on its books a total of \$5,000,000 of which \$2,000,000 had accrued in the first year the contract was undertaken, and \$3,000,000 in the current (second) year. The amount of gross receipts included in the sales factor for the current income year is \$3,000,000. If the taxpayer keeps its books on the cash basis, and as of the end of its current income year has received only \$2,500,000 of the \$3,000,000 billed during the current year, the amount of gross receipts to be included in the sales factor for the current year is \$2,500,000.

(d) The sales factor, except as noted above in Subsections (5)(b) and (c), is computed in the same manner for all long-term contract methods of accounting and is computed for each income year—even though under the completed-contract method of accounting, business income is computed separately.

(6) The completed-contract method of accounting provides that the reporting of income (or loss) is deferred until the year the construction project is completed. In order to determine the amount of income which is attributable to sources within this state, a separate computation is made for each contract completed during the income year, regardless of whether the project is located within or without this state. The amount of income from each contract completed during the income year apportioned to this state is added to other business income apportioned to this state by the regular three-factor formula, and that total together with all nonbusiness income allocated to this state becomes the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within this state using the completed-contract method of accounting is computed as follows.

(a) In the income year the contract is completed, the income (or loss) therefrom is determined.

(b) The income (or loss) determined at Subsection (6)(a) is apportioned to this state by the following method:

(i) a fraction is determined for each year the contract was in progress (the numerator of which is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator of which is the total of all construction costs for the project);

(ii) each fraction determined in Subsection (6)(b)(i) is multiplied by the apportionment formula percentage for that particular year;

(iii) these factors are totaled; and

(iv) the total income is multiplied by this combined percentage, and the resulting income (or loss) is the amount of contract business income assigned to this state.

(c) A corporation using the completed-contract method of accounting is required to include income derived from sources within this state from contracts within or without this state or income from incomplete contracts in progress outside this state in the year of withdrawal, dissolution, or cessation of business pursuant to Subsection (6)(d).

(d) The amount of income (or loss) from each such contract apportioned to this state is determined as if the percentage-of-completion method of accounting were used for

all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which the gross contract price from each such contract from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures in connection with each contract.

R865-6F-18. Exemptions from Corporate Franchise and Income Tax Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-102.

A. The following definitions apply to the exemption for corporate franchise and income tax for a farmers' cooperative.

1. "Member" means a person who shares in the profits of a cooperative association and is entitled to participate in the management of the association.

2. "Producer" means a person who, as owner or tenant, bears the risk of production and receives income based on farm production rather than fixed compensation.

B. In order to claim an exemption from corporate franchise and income tax provided for by Section 59-7-102, a corporation must submit to the Tax Commission form TC-161, Utah Registration for Exemption from Corporate Franchise or Income Tax, along with any information that form requires, for the Tax Commission's determination that the corporation satisfies the requirements of Section 59-7-102.

C. A corporation shall notify the Tax Commission of any change that affects its tax exempt status under Section 59-7-102.

D. For purposes of the Section 59-7-102 exemption for a farmers' cooperative, an association, corporation, or other organization similar to an association, corporation, or other organization of farmers or fruit growers includes establishments primarily engaged in growing crops, raising animals, harvesting timber, and harvesting fish and other animals from a farm, ranch, or their natural habitat.

R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions:

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and end of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the trucking company's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(d) "Mobile property mile" means the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

(e) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or if the property has no such basis, or if the valuation of the property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(f) "Property used during the course of the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(g) "Trucking company" means a corporation engaged in or transacting the business of transporting freight, merchandise, or other property for hire.

(h) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(i) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the income year.

(a) In the determination of the numerator of the property factor, all property, except mobile property, shall be included in the numerator of the property factor.

(b) Mobile property located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that the mobile property's miles within this state bear to the total miles of mobile property within and without this state.

(5) The denominator of the payroll factor is the compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the compensation paid within this state during the income year by the taxpayer for the production of business income.

(a) With respect to all personnel, except those performing services within and without this state, compensation shall be included in the numerator as provided in R865-6F-8(9).

(b) With respect to personnel performing services within and without this state, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed within this state bear to their services performed within and without this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produce business income shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year.

(a) The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with R865-6F-8(10).

(b) The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

(i) Intrastate: all receipts from any shipment that both originates and terminates within this state; and

(ii) Interstate: that portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio that the mobile property miles traveled by the movements or shipments within this state bear to the total mobile property miles traveled by the movements or shipments within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the commission or its agents.

(8) This rule requires apportionment of income to this state if during the course of the income tax year, the trucking company:

(a) owned or rented any real or personal property in this state;

(b) made any pickups or deliveries within this state;

(c) traveled more than 25,000 mobile property miles within this state, provided that the total mobile property miles traveled within this state during the income tax year exceeded three percent of the total mobile property miles traveled in all states by the trucking company during the period; or

(d) made more than 12 trips into this state.

R865-6F-22. Treatment of Loss Carrybacks and Carryforwards Spanning a Change in Reporting Methods Pursuant to Utah Code Ann. Sections 59-7-402 and 59-7-403.

A. For purposes of this rule, "worldwide year" means a year in which a corporation filed a worldwide combined report as set forth in Sections 59-7-101(34) and 59-7-403.

B. For purposes of this rule, "water's edge year" means a year in which a corporation filed a combined report as set forth in Sections 59-7-101(33) and 59-7-402.

C. A corporation that receives permission from the Tax Commission to change its filing method to the water's edge method after having elected the worldwide method will be required to forfeit any unused loss carryovers that were generated in any worldwide year as a condition precedent to making that change. Any losses generated in a subsequent water's edge year may not be carried back against income earned in any year prior to the change to the water's edge method, but must be carried to a post-change water's edge year.

D. A corporation that elects the worldwide filing method subsequent to adoption of this rule will be required to forfeit any unused loss carryovers that were generated in any water's edge year. Any losses generated in a subsequent worldwide year may not be carried back against income earned in any year prior to the change to the worldwide election method, but must be carried to a post-change worldwide year.

R865-6F-24. Attribution of Sales of Tangible Property to the Sales Factor for Apportionment of Business Income Pursuant to Utah Code Ann. Section 59-7-317.

A. For purposes of 15 U.S.C. Section 381, the phrase "activities within such state by or on behalf of such person" means the activities of any member of a unitary business as that term is defined in Section 59-7-302.

B. If the activity in this state of any member of a unitary business exceeds the activity protected by 15 U.S.C. Section 381, sales of tangible property into this state, from an out-of-state location by any member of the unitary business shall be included in this state's sales factor numerator under Section 59-7-317.

C. If any member of a unitary business is taxable in another state under Section 59-7-305, sales of tangible property from a Utah location, into that state by any member of the unitary business shall not be thrown back to this state as ordinarily provided under Section 59-7-318.

D. This rule is effective for taxable years beginning after December 31, 1992.

R865-6F-26. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-7-609.**A. Definitions:**

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-7-609 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the \$10,000 expenditure threshold required by Section 59-7-609 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's Standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah corporate franchise tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah corporate franchise tax due in a tax year shall be carried forward to the extent provided by Section 59-7-609.

H. Carryforward historic preservation tax credits shall be applied against Utah franchise tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, and 59-13-301, and Title 59, Chapter 7, and Title 63M, Chapter 1.

Taxpayers shall deduct credits authorized by Section 59-6-102, Section 59-13-202, Section 59-13-301, Title 59, Chapter 7, and Title 63M, Chapter 1 against Utah corporate franchise tax due in the following order:

- (1) nonrefundable credits;
- (2) nonrefundable credits with a carryforward;
- (3) refundable credits.

R865-6F-29. Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.**(1) Definitions.**

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and ending of the income tax year. The commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the railroad's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Car-mile" means a movement of a unit of car equipment a distance of one mile.

(d) "Locomotive" means a self-propelled unit of equipment designed solely for moving other equipment.

(e) "Locomotive-mile" means the movement of a locomotive a distance of one mile under its own power.

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(g) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions). If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(h) "Property used during the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(i) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(j) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(k) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used within this state during the income year.

(a) In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located

within and without this state during the income year shall be included in the numerator of the property factor.

(b) Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that locomotive-miles and car-miles in the state bear to the total of locomotive-miles and car-miles both within and without this state.

(5) The denominator of the payroll factor is the total compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the amount of compensation paid within this state during the income year for the production of business income.

(a) With respect to all personnel except engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator as provided in R865-6F-8(9).

(b) With respect to engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed in this state bear to their services performed within and without this state.

(c) Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by employees for determination of their income tax liability to this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state that produce business income, except per diem and mileage charges that are calculated by the taxpayer, shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer within this state during the income year.

(a) The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with R865-6F-8(10).

(b) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

(i) Intrastate: all receipts from shipments that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio that the miles traveled by the movement or shipment in this state bears to the total miles traveled by the movement or shipment from point of origin to destination.

(c) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling passengers shall be attributable to this state as follows:

(i) Intrastate: all receipts from the transportation of passengers, including mail and express handled in passenger service, that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio that passenger miles in this state bear to the total of passenger miles within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the commission or its agents.

R865-6F-30. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-

112, 59-7-105, and 59-7-106.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-6F-31. Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

(b) "Print" or "printed material" means the physical embodiment or printed version of any thought or expression, including a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.

(c) "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither term shall mean or include a wholesaler or other distributor of print or printed material.

(d) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(2) When a taxpayer in the business of publishing, selling, licensing or distributing books, newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the taxpayer's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(4) All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business shall be included in the denominator of the property factor.

(5)(a) All real and tangible personal property owned or rented by the taxpayer and used within this state during the tax period shall be included in the numerator of the property factor.

(b) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio that the value of the property attributable to its use by the taxpayer in business activities within this state bears to the value of the property attributable to its use in the taxpayer's business activities within and without this state.

(i) The value of outer-jurisdictional property attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks, or half-circuits, used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the number of uplinks and downlinks or half-circuits used for transmissions within and without this state.

(ii) If information regarding uplink and downlink or half-circuit usage is not available or if measurement of activity is not applicable to the type of outer-jurisdictional property used by the taxpayer, the value of that property attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time, in terms of hours and minutes of use, or other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive within this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions within and without this state.

(iii) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when that property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material, and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located within this state.

(A) One example of the use of outer-jurisdictional property is when the taxpayer owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees. The states in which any printing facility that receives the satellite communications are located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its usage within and without the state.

(B) Assume that ABC Newspaper Co. owns a total of \$400,000,000 of property and, in addition, owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at \$3,000,000. Assume also that the original cost of the satellite is \$100,000,000 for the tax period

and that of the 10,000 uplinks and downlinks or half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of \$4,000,000 and was used in this state for 95 days. The total value of property attributed to this state is determined as follows:

TABLE	
Value of property permanently in state =	\$3,000,000
Value of mobile property: 95/365 or (.260274) x \$4,000,000 =	\$1,041,096
Value of leased satellite property used in-state: (.02) x \$100,000,000 =	\$2,000,000
Total value of property attributable to state =	\$6,041,096
Total property factor percentage: \$6,041,096/\$500,000,000 =	1.2082%

(6) The payroll factor shall be determined in accordance with Sections 59-7-315 and 59-7-316.

(7) The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under R865-6F-8(11)(c).

(8) The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

(a) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state; and

(b) Except as provided in Subsection (8)(b)(ii), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its circulation to purchasers and subscribers within and without the state.

(i) The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for that purpose. If none of the foregoing sources are available, or, if available, not in form or content sufficient for these purposes, the circulation factor shall be determined from the taxpayer's books and records.

(ii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the commission may require, that a portion of those receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by Subsection (8)(b)(i). This attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing specific items of advertising bears to its total circulation of printed material to purchasers and subscribers located within the regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that receipts are not double counted or otherwise included in the numerator of any other state.

(iii) If the purchaser or subscriber is the United States government or if the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for that state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

(ii) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

(c) "Commercial domicile" means:

(i) the place from which the trade or business is principally managed and directed; or

(ii) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

(d) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

(e) "Credit card" means a credit, travel, or entertainment card.

(f) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sections 21 et seq.;

(iii) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(b)(1);

(iv) any bank, industrial loan corporation, or thrift institution incorporated or organized under the laws of any state;

(v) any corporation organized under the provisions of 12 U.S.C. Sections 611 through 631.

(vi) any agency or branch of a foreign depository as defined in 12 U.S.C. Section 3101;

(vii) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

(viii) any corporation whose voting stock is more than 50 percent owned, directly or indirectly, by any person or business entity described in Subsections (1)(h)(i) through (vii), other than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;

(ix) a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases, or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply:

(A) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than 50 percent requirement; and

(B) gross income from incidental or occasional transactions shall be disregarded;

(x) any other person or business entity, other than an insurance company, a credit union exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a securities dealer, that derives more than 50 percent of its gross income from activities that a person described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix) is authorized to transact.

(A) For purposes of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items; and

(B) The commission is authorized to exclude any person from the application of Subsection (1)(h)(x) upon receipt of proof, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix).

(i) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

(i) Gross rents includes:

(A) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(B) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(C) a proportionate part of the cost of any improvement to real property, made by or on behalf of the taxpayer, that reverts to the owner or lessor upon termination of a lease or other arrangement. The amount included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the

taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

(ii) Gross rents does not include:

(A) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(B) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(C) reasonable amounts payable for storage, provided those amounts are payable for space not designated and not under the control of the taxpayer; and

(D) that portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer.

(j) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of credit from another.

(i) Loan includes participations, syndications, and leases treated as loans for federal income tax purposes.

(ii) Loan does not include properties treated as loans under Section 595 of the federal Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar items.

(k) "Loans secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(l) "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

(o) "Principal base of operations" means:

(i) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

(ii) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(A) starts his work and to which he customarily returns in order to receive instructions from his employer;

(B) communicates with his customers or other persons; or

(C) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

(p)(i) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

(A) on which the taxpayer may claim depreciation for federal income tax purposes; or

(B) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

(ii) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a

foreclosure.

(q) "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the taxpayer.

(r) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

(s) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(t) "Taxable" means:

(i) a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

(ii) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

(u) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to that property, such as rolling stock, barges, and trailers.

(2) Apportionment and Allocation.

(a) A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, whose effectively connected income, as defined under the federal Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(c) Each factor shall be computed according to the cash or accrual method of accounting as used by the taxpayer for the taxable year.

(d) If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and receipts factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on rule R865-6F-8 or such other industry apportionment rule adopted by the commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and receipts factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary

group.

(3) Receipts Factor.

(a) In general. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts that constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

(c) Receipts from the lease of tangible personal property.

(i) Except as described in Subsection (3)(d), the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(ii) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's receipts factor are determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(B) If the extent of the use of any transportation property within this state cannot be determined, that property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

(e) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

(i) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the

numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. The receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) Loan servicing fees.

(i) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(iii) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include those fees if the borrower is located in this state.

(l) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the purchaser of the services receives a greater benefit of the service in this state than in any other state.

(m) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

(ii) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

(iii) The receipts factor shall include the following investment and trading assets and activities:

(A) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.

(iv) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in Subsection (3)(m) that are attributable to this state.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment accounts attributed to this state and included in the numerator is determined by multiplying all such income from assets and activities by a fraction, the numerator of which is the average value of the assets properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those funds and securities.

(C) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(iv)(A) and (3)(m)(iv)(B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the average value of those trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(D) For purposes of this subsection, average value shall be determined using the rules for determining the average value of tangible personal property set forth in Subsections (4)(c) and (d).

(v) In lieu of using the method set forth in Subsection (3)(m)(iv), the taxpayer may elect, or the commission may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subsection.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment account attributed to this state and included in the numerator is determined by multiplying all income from those assets and activities by a fraction, the numerator of which is the gross income from those assets and activities properly assigned to a regular place of business of the

taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the gross income from those funds and securities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those funds and securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(v)(A) or (B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the gross income from those trading assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(vi) If the taxpayer elects or is required by the commission to use the method set forth in Subsection (3)(m)(v), the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the commission to use, or the commission requires, a different method.

(vii) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, that asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(n) All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Rule R865-6F-8(10) and (11).

(o) Attribution of certain receipts to commercial domicile.

(i) Except as provided in Subsection (3)(o)(ii), all receipts that would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

(ii)(A) If a unitary group includes one or more financial institutions, and if any member of the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial institution in the unitary group shall be included in the numerator of this state's receipts factor as provided in Subsections (3)(a) through (n) rather than being attributed to the commercial domicile of the financial institution as provided in Subsection (3)(o)(i).

(B) If a unitary group includes one or more financial institutions whose commercial domicile is in this state, and if any member of the unitary group is taxable in another state under section 59-7-305, the receipts of each financial institution in the unitary group that would be included in the numerator of the other state's receipts factor under Subsections (3)(a) through (n) may not be included in the numerator of this state's receipts factor.

(4) Property Factor.

(a) In General.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(b) Property included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor:

(A) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this rule.

(C) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(d) Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two.

(i) If averaging on this basis does not properly reflect average value, the commission may require averaging on a more frequent basis, or the taxpayer may elect to average on a more frequent basis.

(ii) When averaging on a more frequent basis is required by the commission or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission

from the commission to use a different method, or the commission requires a different method of determining average value.

(e) Average value of real property and tangible personal property rented to the taxpayer.

(i) The average value of real property and tangible personal property that the taxpayer has rented from another and are not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(ii) If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the commission or by the taxpayer when approved in writing by the commission. Once approved, that other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the commission to use a different method, or the commission requires a different method of valuation.

(f) Location of real property and tangible personal property owned or rented to the taxpayer.

(i) Except as described in Subsection (4)(f)(ii), real property and tangible personal property owned by or rented to the taxpayer are considered located within this state if they are physically located, situated, or used within this state.

(ii) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of value that shall be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(B) If the extent of the use of any transportation property within this state cannot be determined, the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(g) Location of Loans.

(i) A loan is considered located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(A) the taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(B) the assignment on its records is based upon substantive contacts of the loan to the regular course of business; and

(C) the taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in Subsection (4)(g)(ii) may be rebutted upon a showing by the commission, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan shall then be located within this state if:

(A) the taxpayer had a regular place of business within this

state at the time the loan was made; and

(B) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

(iv) In the case of a loan assigned by the taxpayer to a place without this state that is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of the evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in this rule, was within this state.

(v) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan.

(A) Solicitation. Solicitation is either active or passive.

(I) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business at which the taxpayer's employee is regularly connected or working out of, regardless of where the services of the employee were actually performed.

(II) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(B) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(C) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(D) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement.

(I) The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(II) If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(E) Administration. Administration is the process of managing the account.

(I) Administration includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default.

(II) The activity is located at the regular place of business that oversees this activity.

(h) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of Subsection (4)(g).

(i) Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state shall,

absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business in that state.

(j) Each taxpayer shall make an initial election on whether to include the property described in Subsections (4)(g) through (i) within the property factor. The initial election is the election made or the filing position taken on the first return filed after the effective date of this rule. This election is irrevocable for a period of three years from the time the initial election is made, except in the case where a substantial ownership change occurs and commission approval is obtained to change the election. After the initial three-year period, the election may be revocable only with the prior approval of the commission and shall require the showing of a significant change in circumstance.

(5) Payroll factor.

(a) In general. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer both within and without this state during the taxable year. The payroll factor shall include only that compensation included in the computation of the apportionable income tax base for the taxable year.

(b) Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities connected with the production of nonbusiness income, and payments made to any independent contractor or any other person not properly classifiable as an employee, shall be excluded from both the numerator and denominator of this factor.

(c) When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(i) The employee's services are performed entirely within this state.

(ii) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's principal base of operations is within this state;

(B) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

(6) This rule is effective for taxable years beginning after December 31, 1997.

R865-6F-33. Taxation of Telecommunications Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Call" means a specific telecommunications transmission as described in Subsection (1)(f).

(b) "Channel termination point" means the point at which information can enter or leave the telecommunications network.

(c) "Communications channel" means a communications path, which can be one-way or two-way, depending on the channel, between two or more points. The path may be

designed for the transmission of signals representing human speech, digital or analog data, facsimile, or images.

(d) "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications business, but that are not physically located in any particular state.

(e) "Private telecommunications service" means a dedicated telephone service that entitles the subscriber to the exclusive or priority use of a communications channel or groups of communications channels from one or more channel termination points to another channel termination point.

(f) "Telecommunications" means the electronic transmission of voice, data, image, and other information through the use of any medium such as wires, cables, electromagnetic waves, light waves, or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission.

(g) "Telecommunications service" means providing telecommunications, including services provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

(2) Apportionment and Allocation.

(a) A corporation engaged in the business of telecommunications that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9) and the sales factor in accordance with R865-6F-8(10).

(3)(a) Property Factor.

(b) Outerjurisdictional property that is used by a taxpayer in providing a telecommunications service shall be attributed to this state based on the ratio of property within this state used in providing that service, to property everywhere used in providing the service, exclusive of property not located in any state. The term "property" as used herein refers to property includable in the property factor of the Utah apportionment fraction as defined in commission rule R865-6F-8(8).

(4) Sales Factor Numerator.

(a) The following sales and receipts from telecommunications service other than interstate or international private telecommunications service, shall be included in the Utah sales and receipts numerator:

(i) receipts derived from charges for providing telephone "access" from a location within Utah. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to equipment located in Utah;

(ii) receipts derived from charges for unlimited calling privileges, if the charges are billed by reference to equipment located in Utah;

(iii) receipts derived from charges for individual toll calls that originate and terminate in Utah;

(iv) receipts derived from charges for individual toll calls that either originate or terminate in Utah and are billed by reference to a customer or equipment located in Utah;

(v) receipts derived from any other charges if the charges are not includable in another state's sales factor numerator under that state's law, and the customer's billing address is in Utah.

(b) Gross receipts derived from providing interstate and

international private telecommunications services shall be determined as follows:

(i) If the segment of the interstate or international channel between each termination point is separately billed, 100 percent of the charge imposed at each termination point in this state and for service in this state between those points is includable in the Utah sales factor. In addition, 50 percent of the charge imposed for service between a channel termination point outside this state and a point inside the state shall be included in the Utah sales factor. For purposes of this paragraph, termination points shall be measured by the nearest termination point inside the state to the first termination point outside the state.

(ii) If each segment of the interstate or international channel is not separately billed, the Utah sales shall be the same portion of the interstate or international channel charge that the number of channel termination points within this state bears to the total number of channel termination points within and without this state.

R865-6F-36. Taxation of Registered Securities or Commodities Broker or Dealer Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Brokerage commission income" means income earned by a registered securities or commodities broker or dealer from the purchase and sale of securities or commodities by the broker or dealer:

(i) for which the broker or dealer does not take title; and
(ii) as an agent for a customer's account.

(b) "Commodity" is as defined in Section 475(e)(2), Internal Revenue Code.

(c) "Principal transaction" means a transaction where the registered securities or commodities broker or dealer acts as a principal or underwriter for the broker or dealer's own account, rather than as an agent for the customer.

(d) "Registered securities or commodities broker or dealer" means a corporation registered as a broker or dealer with the Securities and Exchange Commission or the Commodities Futures Trading Commission.

(e) "Security" is as defined in Section 475(c)(2), Internal Revenue Code.

(f) "Securities or commodities used to produce income" means securities or commodities that are purchased and held by a registered securities or commodities broker or dealer as a principal or underwriter for resale to its customers.

(2) Apportionment and allocation.

(a) A registered securities or commodities broker or dealer whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(3) Property factor.

(a) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the taxable year, plus the average value of securities or commodities used to produce income during the taxable year that are held for resale exclusively through a branch, office, or other place of business in this state. The denominator is the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the taxable year, plus the average value of all securities or commodities used to

produce income during the taxable year.

(b) Securities or commodities used to produce income shall be valued at original cost.

(4) Sales factor.

(a) The sales factor is a fraction, the numerator of which is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within this state during the taxable year. The denominator is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state during the taxable year.

(b) Brokerage commission income shall be included in the denominator of the sales factor. Brokerage commission income shall be included in the numerator of the sales factor if the customer that is paying the commission is located in Utah. A customer is located in Utah if the mailing address of the customer as it appears in the broker or dealer's records is in Utah.

(c) Gross receipts from principal transactions shall be included in the denominator of the sales factor. Gross receipts from principal transactions shall be included in the numerator of the sales factor if the sale is made through a branch, office, or other place of business in Utah. Gross receipts from principal transactions shall be determined after the deduction of any cost incurred by the taxpayer to acquire the securities or commodities.

(d) Other gross receipts such as margin interest on brokerage accounts and account maintenance fees shall be included in the denominator of the sales factor, and, if the customer that is paying the amounts or fees is located in Utah based on the customer address as it appears in the broker or dealer's records, in the numerator of the sales factor.

R865-6F-37. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

(a) marking the box on the taxpayer's corporate franchise or income tax return indicating that the taxpayer has filed federal form 8886, or successor form, with the Internal Revenue Service; and

(b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, or successor form, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264, or successor form, was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

R865-6F-38. Renewable Energy Credit Amount Pursuant to Utah Code Ann. Section 59-7-614.

An amount certified by the Utah State Energy Program under rule R638-2, Renewable Energy Systems Tax Credit, as qualifying for the tax credit under Section 59-7-614 shall, in the absence of fraud or misrepresentation, be the amount allowed by

the commission as a credit under that section.

R865-6F-39. Definitions Related to Captive Real Estate Investment Trust and Foreign Real Estate Investment Trust Pursuant to Utah Code Ann. Section 59-7-101.

The following definitions apply to the definitions of captive real estate investment trust and foreign real estate investment trust in Section 59-7-101.

(1) "Cash or cash equivalents" means currency and coins, bank balances, negotiable money orders, checks, and highly liquid investments that can easily be converted into cash, such as treasury bills, certificates of deposit, marketable securities, and negotiable financial instruments.

(2) "Established securities market" is defined as that phrase is defined in Treas. Reg. Section 1.884-5 (d)(2) (2007), which is adopted and incorporated by reference.

(3) "Listed Australian property trust" means:

(a) an Australian unit trust registered as a managed investment scheme under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market; and

(b) an entity organized as a trust, provided that an entity listed in Subsection (3)(a) owns or controls, directly or indirectly, 75 percent or more of the voting power or value of the beneficial interests or shares of that trust.

(4) "Regularly traded" is defined as that phrase is defined in Treas. Reg. Section 1.884-5 (d)(4) (2007), which is adopted and incorporated by reference.

R865-6F-40. Foreign Operating Company Subtraction from Unadjusted Income Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-106.

(1) The activities of a partnership interest are taken into account in determining whether a corporation qualifies as a foreign operating company and calculating any adjustment for which the corporate partner that is a foreign operating company is eligible.

(a) Partnership activities are attributed to the corporation to the extent of the corporation's ownership interest in the partnership.

(b) The character of each class or type of partnership income passes through to the corporate partner. Accordingly, a corporate partner that is a foreign operating company may not make a subtraction from unadjusted income as a foreign operating company for partnership income generated from intangible property and assets held for investment and not from a regular business trading activity.

(2) Prior to determining the foreign operating company subtraction, a foreign operating company that is a member of a unitary group shall eliminate a transaction between the foreign operating company and a partnership held directly or indirectly by a member of the same unitary group to the extent of the interest the foreign operating company holds in the partnership.

KEY: taxation, franchises, historic preservation, trucking industries

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 9-2-415
 16-10a-1501
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R865. Tax Commission, Auditing.**R865-20T. Tobacco Tax.****R865-20T-1. Assessment of Cigarette and Tobacco Products Tax Pursuant to Utah Code Ann. Sections 59-14-204 and 59-14-302.**

A. The cigarette tax is a tax on the first purchase, use, storage, or consumption of cigarettes by a manufacturer, jobber, wholesaler, distributor, retailer, user, or consumer within the state.

B. If cigarettes are purchased outside the state for use, storage, or consumption within the state, the tax must be paid by the user, storer, or consumer.

C. The tobacco products tax is a tax on the first purchase, use, storage, or consumption of tobacco products by a manufacturer, wholesaler, jobber, distributor, retailer, user, storer, or consumer within the state.

D. No tax is due from nonresidents or tourists who import cigarettes or tobacco products for their own use while in the state.

R865-20T-3. Licensing of Cigarette and Tobacco-Products Dealers Pursuant to Utah Code Ann. Sections 59-14-202 and 59-14-301.

A. Each cigarette vending machine shall be licensed as a separate place of business, provided that only one machine needs to be licensed at any place of business where the licensee has more than one machine in operation.

1. The license shall be posted in a conspicuous place on the vending machine.

2. If a licensee operates more than one place of business, the application shall contain the required information about each place of business.

3. The application must be accompanied by the required fee for each place of business.

B. If a licensee's place of business changes, the licensee shall forward the license to the Tax Commission with a request for notation of the change in location.

C. A license under which business has been transacted has no redeemable value when the licensee ceases to transact business.

R865-20T-5. Bonding Requirements For Cigarette and Tobacco Products Dealers Pursuant to Utah Code Ann. Sections 59-14-201 and 59-14-301.

(1) Dealers who only sell tobacco products upon which the taxes imposed by this act have been paid by a previous seller are not required to post a bond.

(2) Subject to Subsections (3) and (4), the commission shall calculate the amount of a bond required under Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing ("Chapter 14"), on the basis of:

(a) for an applicant:

(i) commission estimates of the applicant's tax liability under Chapter 14; and

(ii) the amount of a tax owed under Chapter 14 by any of the following:

(A) the applicant;

(B) a fiduciary of the applicant; and

(C) a person for which the applicant is required to collect, truthfully account for, and pay over a tax under Chapter 14; and

(b) for a licensee:

(i) commission estimates of the licensee's tax liability under Chapter 14; and

(ii) the amount of a tax owed under Chapter 14 by any of the following:

(A) the licensee;

(B) a fiduciary of the licensee; and

(C) a person for which the licensee is required to collect, truthfully account for, and pay over a tax under Chapter 14.

(3) If the commission determines it is necessary to ensure compliance with Chapter 14, the commission may require a licensee to increase the amount of a bond filed with the commission.

(4) A licensee that does not purchase cigarette stamps on credit may not make any single purchase of cigarette stamps that exceeds 90% of the amount of the bond the licensee has filed with the commission.

R865-20T-7. Export Sales of Cigarette and Tobacco Products Pursuant to Utah Code Ann. Sections 59-14-205 and 59-14-401.

A. Sales of cigarettes and tobacco products to jobbers dealers outside the state are not subject to the taxes imposed by this act provided that physical delivery of the goods is made outside the state.

B. All export sales for which an exemption or refund is claimed must be supported by invoices and delivery tickets or bills of lading showing all of the following:

1. date of sale;

2. name and address of customer;

3. address to which delivered;

4. quantity and type of product sold.

R865-20T-8. Records Pertaining To Cigarette and Tobacco-Product Sales Pursuant to Utah Code Ann. Section 59-14-404.

A. It is the duty of manufacturers, jobbers, distributors, wholesalers, retailers, users, or consumers of cigarettes or tobacco products to keep records necessary to determine the amount of tax due on the sale, purchase, or consumption of those products.

B. All pertinent records must be preserved for a period of three years.

C. The records shall be available for inspection by the Tax Commission or its authorized agents at all times during normal business hours or at other times determined by mutual agreement.

R865-20T-9. Cigarette-Manufacturer Inventory Requirements Pursuant to Utah Code Ann. Section 59-14-205.

A. Inventories of cigarettes held by manufacturers in warehouses located in Utah may be delivered to wholesalers or jobbers without being stamped. A record of those deliveries must be kept by the manufacturer at its place of business in this state or at the warehouse. The record shall contain all of the following:

1. date of delivery;

2. the person to whom the cigarettes were delivered;

3. place of delivery;

4. quantity delivered.

B. The record must be available for inspection by the Tax Commission or its agents at any reasonable time.

C. If the merchandise is sold to retailers, consumers or persons other than wholesalers or jobbers, the manufacturer must qualify as a licensed dealer.

R865-20T-11. Reporting of Imported Cigarettes Pursuant to Utah Code Ann. Section 59-14-212.

A. A manufacturer, distributor, wholesaler, or retail dealer required by Section 59-14-212 to provide the Tax Commission, on a quarterly basis, a copy of the importer's federal import permit and the customs form showing the tax information required by federal law:

1. is not required to enclose that information with the quarterly report;

2. shall retain that information in its records; and

3. at the request of the Tax Commission, provide copies of

that information to the Tax Commission.

R865-20T-12. Definition of Counterfeit Tax Stamp Pursuant to Utah Code Ann. Section 59-14-102.

"Counterfeit tax stamp," for purposes of the definition of a counterfeit cigarette in Section 59-14-102, includes a cigarette stamp that has previously been affixed to another pack of cigarettes.

R865-20T-13. Calculation of Tax on Moist Snuff Pursuant to Utah Code Ann. Section 59-14-302.

(1) Moisture content, for purposes of ascertaining whether a tobacco product meets the definition of moist snuff, shall be the moisture content annually reported by the manufacturer to the United States Department of Health and Human Services.

(2)(a) Tax on moist snuff shall be calculated by multiplying the net weight as listed by the manufacturer, in ounces, of the taxable moist snuff by the tax rate for moist snuff required under Section 59-14-302.

(b) If the net weight includes a fractional part of an ounce, that fractional part of an ounce shall be included in the calculation.

(3) The calculation described in Subsection (2) shall be carried to three decimal places and rounded up to the nearest cent whenever the third decimal place of the calculation in Subsection (2) is greater than 4.

R865-20T-14. Directory of Cigarettes Approved for Stamping Pursuant to Utah Code Ann. Sections 59-14-603 and 59-14-607.

(1) The commission shall update the directory of cigarettes approved for stamping required under Section 59-14-603 on the first business day of each month.

(2) Additions or modifications of brand families shall be by supplemental certification delivered to the commission by the manufacturer no later than 30 days before the next scheduled monthly update of the directory.

(3) Approved brand family additions or modifications shall be made to the directory on the next scheduled monthly update only if the manufacturer submitted a complete and accurate supplemental certification with requested additions or modifications 30 days prior to the scheduled monthly directory update.

(4) If the manufacturer does not submit a complete and accurate supplemental certification to the commission within 30 days of the next scheduled monthly update, approved brand family additions or modifications will not be made to the directory until the following monthly update.

(5) Directory updates between the regularly scheduled monthly updates are generally only permitted to correct errors or omissions in the directory made by the commission.

KEY: taxation, tobacco products

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Notice of Continuation January 3, 2012

59-14-102
59-14-202
59-14-203.5
59-14-204
through
59-14-206
59-14-210
59-14-212
59-14-301
through
59-14-303
59-14-401
59-14-404
59-14-603
59-14-607

R907. Transportation, Administration.**R907-62. Americans with Disabilities Act.****R907-62-1. Authority and Purpose.**

(1) The Department of Transportation, pursuant to 28 CFR 35.107, adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act.

(2) The provision of 28 CFR 35, implements of Title II of the Americans With Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, 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 this or any such entity.

R907-62-2. Definitions.

(1) "The ADA Coordinator" means the Department's coordinator or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

(2) "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

- (a) Office of Planning and Budget;
- (b) Department of Human Resource Management;
- (c) Division of Risk Management;
- (d) Division of Facilities Construction Management; and
- (e) Office of the Attorney General.

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

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

(5) "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by a public entity, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

(6) "Public Entity" means the Utah Department of Transportation.

R907-62-3. Filing of Complaints.

(1) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination.

(2) The complaint shall be filed with the department's ADA Coordinator in writing or in another accessible format suitable to the individual.

(3) Each complaint shall:

- (a) include the individual's name and address;
- (b) include the nature and extent of the individual's disability;
- (c) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;
- (d) describe the action and accommodation desired; and
- (e) be signed by the individual or by his legal representative.

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

R907-62-4. Investigation of Complaint.

(1) The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in R907-62-3(3) if it is not made available by the individual.

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

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

R907-62-5. Issuance of Decision.

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

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

R907-62-6. Appeals.

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

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

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

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

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

- (a) an expenditure of funds which is not absorbable and would require appropriation authority;
- (b) facility modifications; or
- (c) reclassification or reallocation in grade; he/she shall also consult with the State ADA Coordinating Committee.

(6) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

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

R907-62-7. Classification of Records.

The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63G-2-305 until

R926. Transportation, Program Development.**R926-2. Evaluation of Proposed Additions to or Deletions from the State Highway System.****R926-2-1. Authority.**

This rule establishes the procedure and criteria by which highways shall be considered for the addition to or deletion from the state highway system as required by Utah Code Ann. Section 72-4-102.5.

R926-2-2. Purpose.

The purpose of this rule is to establish the following:

- (1) a process for a highway authority to propose additions to or deletions from the state highway system;
- (2) a procedure for evaluating requested additions to or deletions from the state highway system; and
- (3) a set of criteria by which proposed changes shall be consistently evaluated.

R926-2-3. Definitions.

The terms used in this rule to describe different types of highways shall have the same meaning as provided in Utah State Code under Section 72-4-102.5 which is the same as provided under the Federal Highway Administration Functional Classification Guidelines.

- (1) "commission" means the Utah Transportation Commission;
- (2) "department" means the Utah Department of Transportation;
- (3) "local highway authority" means the local political subdivision, such as town, city or county responsible for the highway system in that jurisdiction;
- (4) "tourist area" means an area of the state frequented by tourists for the purpose of visiting national parks, national recreation areas, national monuments, or state parks;
- (5) "transfer" means the process of adding or deleting a segment of roadway from one government's highway system to or from another government's highway system;
- (6) "urban area" has the same meaning as provided under the Federal Highway Administration Functional Classification Guidelines.

R926-2-4. Notifications.

The following notifications shall be made regarding the transfer of highways.

- (1) The department will annually, on or before September 1st, notify the local highway authorities of its intent to collect proposed changes to the state system with the responding proposals requested to be returned to the department by December 1st.
- (2) The department shall no later than June 30th of each year notify the Transportation Interim Committee of the Legislature of any proposed transfers.
- (3) The commission shall notify the public and any affected local highway authority of any transfer under consideration and provide the opportunity to discuss that proposal at an open public meeting of the commission.
- (4) The commission shall no later than November 1st of each year notify and provide to the Transportation Interim Committee of the Legislature:
 - (a) a list of the highways recommended for transfer;
 - (b) a list of potential transfers that are currently under consideration; and
 - (c) a list of transfers that were proposed but not agreed to by the department or local highway authority.

R926-2-5. Procedure for Requesting an Addition to or a Deletion from the State Highway System.

A request for the addition to or deletion of a highway from the state highway system shall be made by the government

agency currently responsible for the highway, a member of the Utah Transportation Commission or the Utah Department of Transportation. The request shall be conveyed to the Utah Department of Transportation and will be directed to the region director responsible for the area where the highway is primarily located.

R926-2-6. Procedure for Evaluating Proposed Changes to the State System.

The procedure for evaluating proposed changes to the state highway system is as follows:

- (1) The region director shall:
 - (a) notify all impacted local government agencies of the proposed change;
 - (b) make a preliminary review of the proposed change that may include but not be limited to:
 - (i) determine of what, if any funding will accompany the road transfer;
 - (ii) determine of what, if any, physical improvements may be necessary on the roadway before the transfer is completed;
 - (iii) secure a written statement from the local government agency regarding the proposed transfer;
 - (iv) make a judgment as to which highway agency has the best operational abilities for maintenance and construction activities on the proposed route; and
 - (v) determine if the highway continuity and the efficiency of state highway system operation and maintenance activities is impacted by the proposed change.
 - (c) forward the proposed transfer along with the results of the preliminary review to the Systems Planning and Programming Director; and
 - (d) present and discuss potential road transfers at the regularly scheduled monthly Transportation Commission meetings.
- (2) The Systems Planning and Programming Director shall review the request from the region director and shall:
 - (a) determine if the proposed transfer meets the criteria to qualify for inclusion on the state highway system and is consistent with statewide practice;
 - (b) with the Director of Program Financing, identify the source of funds, if any, proposed to accompany the transfer; and
 - (c) shall present the evaluation to the commission with a recommendation whether the route qualifies for inclusion on the state highway system and any proposed funding considerations;
- (3) The commission shall review the recommendation and shall:
 - (a) consider the proposed transfer at a public meeting where the affected local officials are invited to discuss and comment on the proposed change;
 - (b) discuss any funding considerations and the circumstances under which the proposed transfer will take place;
 - (c) take into account any other factors considered appropriate in consultation with the department and local highway authority impacted;
 - (d) approve or reject the proposed change in the state highway system;
 - (e) if it approves the transfer, make the required changes to the state highway system by resolution; and
 - (f) report to the Transportation Interim Committee of the Legislature as detailed in section (4).
- (4) The commission may continue to process proposed transfers that are currently under consideration by using the same notification and evaluation criteria as presented in this rule.
- (5) The State Legislature will review the addition to or deletions from the state highway system and shall approve or disapprove the changes.

R926-2-7. Criteria for Inclusion of Highways in the State Highway System.

Highways requested to be added to or to remain on the state highway system shall be evaluated as follows:

- (1) General Criteria:
 - (a) The primary function of state highways is to provide for the safe and efficient movement of traffic, while providing access to property is a secondary function.
 - (b) The primary function of county and municipal highways is to provide safe and efficient access to property.
 - (c) For purposes of this rule, if a highway is within ten miles of a location identified under this section, the location is considered to be served by that highway.
- (2) A state highway shall:
 - (a) serve a statewide purpose by accommodating interstate movement of traffic or interregion movement of traffic within the state;
 - (b) primarily move higher traffic volumes over longer distances than highways under local jurisdiction;
 - (c) connect major population centers;
 - (d) be spaced so that:
 - (i) all developed areas in the state are within a reasonable distance of a state highway; and
 - (ii) duplicative state routes are avoided.
 - (e) provide state highway system continuity and efficiency of state highway system operation and maintenance activities;
 - (f) include all interstate routes, all expressways, and all highways on the National Highway System as designated by the Federal Highway Administration under 23 C.F.R. Section 470, Subpart A, as of January 1, 2005; and
 - (g) exclude parking lots, driving ranges, and campus roads.
 - (3) In addition to the provisions of Subsection (1), in rural areas a state highway shall:
 - (a) include all minor arterial highways;
 - (b) include a major collector highway that:
 - (i) serves a county seat;
 - (ii) serves a municipality with a population of 1,000 or more;
 - (iii) serves a major industrial, commercial, or recreation areas that generate traffic volumes equivalent to a population of 1,000 or more;
 - (iv) provides continuity for the state highway system by providing major connections between other state highways;
 - (v) provides service between two or more counties; or
 - (vi) serves a compelling statewide public safety interest;
 - (c) exclude all minor collector streets and local roads.
 - (4) In addition to the provisions of Subsection (1), in urban areas a state highway shall:
 - (a) include all principal arterial highways;
 - (b) include a minor arterial highway that:
 - (i) provides continuity for the state highway system by providing major connections between other state highways;
 - (ii) is a route that is expected to be a principal arterial highway within ten years; or
 - (iii) is needed to provide access to state highways; and
 - (c) exclude all collector highways and local roads.
 - (5) In addition to the provisions of Subsections (2) and (3), in tourist areas, a state highway:
 - (a) shall include a highway that:
 - (i) serves a national park or a national recreational area; or
 - (ii) serves a national monument with visitation greater than 100,000 per year; or
 - (b) may include a highway that:
 - (i) serves a state park with visitation greater than 100,000 per year; or
 - (ii) serves a recreation site with a visitation greater than 100,000 per year.

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72-4-102.5

R986. Workforce Services, Employment Development.**R986-100. Employment Support Programs.****R986-100-101. Authority.**

(1) The legal authority for these rules and for the Department of Workforce Services to carry out its responsibilities is found in Sections 35A-1-104 and 35A-3-103.

(2) If any applicable federal law or regulation conflicts with these rules, the federal law or regulation is controlling.

R986-100-102. Scope.

(1) These rules establish standards for the administration of the following programs, for the collection of overpayments as defined in 35A-3-602(7) and/or disqualifications from any public assistance program provided under a state or federally funded benefit program;

- (a) Food Stamps
- (b) Family Employment Program (FEP)
- (c) Family Employment Program Two Parent (FEPTP)
- (d) Refugee Resettlement Program (RRP)
- (e) Working Toward Employment (WTE)
- (f) General Assistance (GA)
- (g) Child Care Assistance (CC)
- (h) Emergency Assistance Program (EA)
- (i) Adoption Assistance Program (AA)
- (j) Activities funded with TANF monies

(2) The rules in the 100 section (R986-100 et seq.) apply to all programs listed above. Additional rules which apply to each specific program can be found in the section number assigned for that program. Nothing in R986 et seq. is intended to apply to Unemployment Insurance.

R986-100-103. Acronyms.

The following acronyms are used throughout these rules:

- (1) "AA" Adoption Assistance Program
- (2) "ALJ" Administrative Law Judge
- (3) "CC" Child Care Assistance
- (4) "CFR" Code of Federal Regulations
- (5) "DCFS" Division of Children and Family Services
- (6) "DWS" Department of Workforce Services
- (7) "EA" Emergency Assistance Program
- (8) "FEP" Family Employment Program
- (9) "FEPTP" Family Employment Program Two Parent
- (10) "GA" General Assistance
- (11) "INA" Immigration and Nationality Act
- (12) "IPV" intentional program violation
- (13) "ORS" Office of Recovery Service, Utah State Department of Human Services
- (14) "PRWORA" the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
- (15) "RRP" Refugee Resettlement Program
- (16) "SNB" Standard Needs Budget
- (17) "SSA" Social Security Administration
- (18) "SSDI" Social Security Disability Insurance
- (19) "SSI" Supplemental Security Insurance
- (20) "SSN" Social Security Number
- (21) "TANF" Temporary Assistance for Needy Families
- (22) "TCA" Transitional Cash Assistance
- (23) "UCA" Utah Code Annotated
- (24) "UI" Unemployment Compensation Insurance
- (25) "USCIS" United States Citizenship and Immigration Services.
- (26) "VA" US Department of Veteran Affairs
- (27) "WTE" Working Toward Employment Program
- (28) "WIA" Workforce Investment Act
- (29) "WSL" Work Site Learning

R986-100-104. Definitions of Terms Used in These Rules.

In addition to the definitions of terms found in 35A Chapter 3, the following definitions apply to programs listed in

R986-100-102:

(1) "Applicant" means any person requesting assistance under any program in Section 102 above.

(2) "Assistance" means "public assistance."

(3) "Certification period" is the period of time for which public assistance is presumptively approved. At the end of the certification period, the client must cooperate with the Department in providing any additional information needed to continue assistance for another certification period. The length of the certification period may vary between clients and programs depending on circumstances.

(4) "Client" means an applicant for, or recipient of, public assistance services or payments, administered by the Department.

(5) "Confidential information" means information that has limited access as provided under the provisions of UCA 63G-2-201 or 7 CFR 272.1. The name of a person who has disclosed information about the household without the household's knowledge is confidential and cannot be released. If the person disclosing the information states in writing that his or her name and the information may be disclosed, it is no longer considered confidential.

(6) "Department" means the Department of Workforce Services.

(7) "Education or training" means:

- (a) basic remedial education;
- (b) adult education;
- (c) high school education;
- (d) education to obtain the equivalent of a high school diploma;
- (e) education to learn English as a second language;
- (f) applied technology training;
- (g) employment skills training;
- (h) WSL; or
- (i) post high school education.

(8) "Employment plan" consists of two parts, a participation agreement and an employment plan. Together they constitute a written agreement between the Department and a client that describes the requirements for continued eligibility and the result if an obligation is not fulfilled.

(9) "Executive Director" means the Executive Director of the Department of Workforce Services.

(10) "Financial assistance" means payments, other than for food stamps, child care or medical care, to an eligible individual or household under FEP, FEPTP, RRP, GA, or WTE and which is intended to provide for the individual's or household's basic needs.

(11) "Full-time education or training" means education or training attended on a full-time basis as defined by the institution attended.

(12) "Group Home." The Department uses the definition of group home as defined by the state Department of Human Services.

(13) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued. For all programs except food stamps and CC, the individuals included in the household assistance unit must be related to each other as described in R986-200-205.

(14) "Income match" means accessing information about an applicant's or client's income from a source authorized by law. This includes state and federal sources.

(15) "Local office" means the Employment Center which serves the geographical area in which the client resides.

(16) "Material change" means anything that might affect household eligibility, participation levels or the level of any assistance payment including a change in household composition, eligibility, assets and/or income.

(17) "Minor child" is a child under the age of 18, or under

19 years of age and in school full time and expected to complete his or her educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.

(18) "Parent" means all natural, adoptive, and stepparents.

(19) "Public assistance" means:

(a) services or benefits provided under UCA 35A Chapter 3, Employment Support Act;

(b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

(c) foster care maintenance payments provided with the General Fund or under Title IV-E of the Social Security Act;

(d) food stamps; and

(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

(20) "Recipient" means any individual receiving assistance under any of the programs listed in Section 102.

(21) Review or recertification. Client's who are found eligible for assistance or certain exceptions under R986-200-218 are given a date for review or recertification at which point continuing eligibility is determined.

(22) "Standard needs budget" is determined by the Department based on a survey of basic living expenses.

(23) "Work Site Learning" or "WSL" means work experience or training program.

R986-100-105. Availability of Program Manuals.

(1) Program manuals for all programs are available for examination on the Department's Internet site. If an interested party cannot obtain a copy from the Internet site, a copy will be provided by the Department upon request. Reasonable costs of copying may be assessed if more than ten pages are requested.

(2) For the Food Stamp Program, copies of additional information available to the public, including records, regulations, plans, policy memos, and procedures, are available for examination upon request by members of the public, during office hours, at the Department's administrative offices, as provided in 7 CFR 272.1(d)(1) (1999).

R986-100-106. Residency Requirements.

(1) To be eligible for assistance for any program listed in R986-100-102, a client must be living in Utah voluntarily and not for a temporary purpose. There is no requirement that the client have a fixed place of residence. An individual is not eligible for public assistance in Utah if they are receiving public assistance in another state.

(2) The Department may require that a household live in the area served by the local office in which they apply.

(3) Individuals are not eligible if they are:

(a) in the custody of the criminal justice system;

(b) residents of a facility administered by the criminal justice system;

(c) residents of a nursing home;

(d) hospitalized; or

(e) residents in an institution.

(4) Individuals who reside in a temporary shelter, including shelters for battered women and children, for a limited period of time are eligible for public assistance if they meet the other eligibility requirements.

(5) Residents of a substance abuse or mental health facility may be eligible if they meet all other eligibility requirements. To be eligible for food stamps, the substance abuse or mental health facility must be an approved facility. Approval is given by the Department. Approved facilities must notify the Department and give a "change report form" to a client when the client leaves the facility and tell the client to return it to the local office. The change report form serves to notify the Department that the client no longer lives in the approved facility.

(6) Residents of a group home may be eligible for food

stamps provided the group home is an approved facility. The state Department of Human Services provides approval for group homes.

R986-100-107. Client Rights.

(1) A client may apply or reapply at any time for any program listed in R986-100-102 by completing and signing an application and turning it in, in person or by mail, at the local office.

(2) If a client needs help to apply, help will be given by the local office staff.

(3) No individual will be discriminated against because of race, color, national origin, sex, age, religion or disability.

(4) A client's home will not be entered without permission.

(5) Advance notice will be given if the client must be visited at home outside Department working hours.

(6) A client may request an agency conference to reconcile any dispute which may exist with the Department.

(7) Information about a client obtained by the Department will be safeguarded.

(8) If the client is physically or mentally incapable or has demonstrated an inability to manage funds, the Department may make payment to a protective payee.

R986-100-108. Safeguarding and Release of Information.

(1) All information obtained on specific clients, whether kept in the case file, in the computer system, maintained by the Department, the state, or somewhere else, is safeguarded in accordance with the provisions of Sections 63G-2-101 through 63G-2-901 and 7 CFR 272.1(c) and 7 CFR 272.8 and PRWORA (1996) Title VIII, Section 837.

(2) General statistical information may be released if it does not identify a specific client. This includes information obtained by the Department from another source. Information obtained from the federal government for purposes of income match can never be released.

R986-100-109. Release of Information to the Client or the Client's Representative.

(1) Information obtained by the Department from any source, which would identify the individual, will not be released without the individual's consent or, if the individual is a minor, the consent of his or her parent or guardian.

(2) A client may request, review and/or be provided with copies of anything in the case record unless it is confidential. This includes any records kept on the computer, in the file, or somewhere else.

(3) Information that may be released to the client may be released to persons other than the client with written permission from the client. All such requests must include:

(a) the date the request is made;

(b) the name of the person who will receive the information;

(c) a description of the specific information requested including the time period covered by the request; and

(d) the signature of the client.

(4) The client is entitled to a copy of his or her file at no cost. Duplicate requests may result in an appropriate fee for the copies in accordance with Department policy which will not be more than the cost to the Department for making copies.

(5) The original case file will only be removed from the office as provided in R986-100-110(6) and cannot be given to the client.

(6) Information that is not released to the client because it is confidential, cannot be used at a hearing or to close, deny or reduce assistance.

(7) Requests for information intended to be used for a commercial or political reason will be denied.

R986-100-110. Release of Information Other Than at the Request of the Client.

(1) Information obtained from or about a client will not be published or open to public inspection in any manner which would reveal the client's identity except:

(a) unless there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only provide information available in the public record on the criminal charge; or

(b) if an abstract has been docketed in the district court on an overpayment, the Department can provide information that is a matter of public record in the abstract.

(2) Any information obtained by the Department pursuant to an application for or payment of public assistance may not be used in any court or admitted into evidence in an action or proceeding, except:

(a) in an action or proceeding arising out of the client's receipt of public assistance, including fraudulently obtaining or retaining public assistance, or any attempt to fraudulently obtain public assistance; or

(b) where obtained pursuant to a court order.

(3) If the case file, or any information about a client in the possession of the Department, is subpoenaed by an outside source, legal counsel for the Department will ask the court to quash the subpoena or take such action as legal counsel deems appropriate.

(4) Information obtained by the Department from the client or any other source, except information obtained from an income match, may be disclosed to:

(a) an employee of the Department in the performance of the employee's duties unless prohibited by law;

(b) an employee of a governmental agency that is specifically identified and authorized by federal or state law to receive the information;

(c) an employee of a governmental agency to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against public assistance programs, or the recovery of overpayments of public assistance funds;

(d) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or to aid a felony criminal investigation except no information regarding a client receiving food stamps can be provided under this paragraph;

(e) to a law enforcement officer when the client is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation or when the client has information which will assist a law enforcement officer in locating or apprehending an individual who is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation and the officer is acting in his official capacity. The only information under this paragraph which can be released on a client receiving food stamps is the client's address, SSN and photographic identification;

(f) to a law enforcement official, upon written request, for the purpose of investigating an alleged violation of the Food Stamp Act 7 USCA 2011 or any regulation promulgated pursuant to the act. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person being investigated. Under this paragraph, the Department can release to the law enforcement official, more than just the client's address, SSN and photo identification;

(g) an educational institution, or other governmental entity engaged in programs providing financial assistance or federal needs-based assistance, job training, child welfare or protective services, foster care or adoption assistance programs, and to individuals or other agencies or organizations who, at the

request of the Department, are coordinating services and evaluating the effectiveness of those services;

(h) to certify receipt of assistance for an employer to get a tax credit; or

(i) information necessary to complete any audit or review of expenditures in connection with a Department public assistance program. Any information provided under this part will be safeguarded by the individual or agency receiving the information and will only be used for the purpose expressed in its release.

(5) Any information released under paragraph (4) above can only be released if the Department receives assurances that:

(a) the information being released will only be used for the purposes stated when authorizing the release; and

(b) the agency making the request has rules for safeguarding the information which are at least as restrictive as the rules followed by the Department and that those rules will be adhered to.

(6) Case records or files will not be removed from the local office except by court order, at the request of authorized Department employees, the Department's Information Disclosure Officer, the Department's Quality Control office or ORS.

(7) In an emergency, as determined to exist by the Department's Information Disclosure Officer, information may be released to persons other than the client before permission is obtained.

(8) For clients receiving CC, the Department may provide limited additional information to the child care provider identified by the client as the provider as provided in R986-700-703.

(9) Taxpayer requests to view public assistance payrolls will be denied.

R986-100-111. How to Apply For Assistance.

(1) To be eligible for assistance, a client must complete and sign an application for assistance.

(2) The application is not complete until the applicant has provided complete and correct information and verification as requested by the Department so eligibility can be determined or re-established at the time of review at the end of the certification period. The client must agree to provide correct and complete information to the Department at all times to remain eligible. This includes:

(a) property or other assets owned by all individuals included in the household unit;

(b) insurance owned by any member of the immediate family;

(c) income available to all individuals included in the household unit;

(d) a verified SSN for each household member receiving assistance. If any household member does not have a SSN, the client must provide proof that the number has been applied for. If a client fails to provide a SSN without good cause, or if the application for a SSN is denied for a reason that would be disqualifying, assistance will not be provided for that household member. Good cause in this paragraph means the client has made every effort to comply. Good cause does not mean illness, lack of transportation or temporary absence because the SSA makes provisions for mail-in applications in lieu of applying in person. Good cause must be established each month for continued benefits;

(e) the identity of all individuals who are living in the household regardless of whether they are considered to be in the household assistance unit or not;

(f) proof of relationship for all dependent children in the household. Proof of relationship is not needed for food stamps or child care; and

(g) a release of information, if requested, which would

allow the Department to obtain information from otherwise protected sources when the information requested is necessary to establish eligibility or compliance with program requirements.

(3) All clients, including those not required to participate in an employment plan, will be provided with information about applicable program opportunities and supportive services.

R986-100-112. Assistance Cannot Be Paid for Periods Prior to Date of Application.

(1) Assistance payments for any program listed in Section 102 above cannot be made for any time period prior to the day on which the application for assistance was received by the Department.

(2) If an application for assistance is received after the first day of the month, and the client is eligible to receive assistance, payment for the first month is prorated from the date of the application.

(3) If additional verifying information is needed to complete an application, it must be provided within 30 days of the date the application was received. If the client is at fault in not providing the information within 30 days, the first day the client can be eligible is the day on which the verification was received by the Department.

(4) If the verification is not received within 60 days of the date the application was received by the Department, a new application is required and assistance payments cannot be made for periods prior to the date the new application is received.

(5) If an application for assistance was denied and no appeal taken within 90 days, or a decision unfavorable to the client was issued on appeal, assistance cannot be claimed, requested, or paid for that time period.

R986-100-113. A Client Must Inform the Department of All Material Changes.

(1) A material change is any change which might affect eligibility.

(2) Households receiving assistance must report all material changes to the Department as follows:

(a) households receiving food stamps must report a change in the household's gross income if the income exceeds 130% of the federal poverty level. The change must be reported within ten days from the end of the calendar month in which the change occurred. Changes reported by the tenth of the month following the month when the change occurred are considered timely; and

(b) households receiving GA, WTE, FEP, FEPTP, AA and RRP that do not meet the requirements of paragraph (2)(a) must report the following changes within ten days of the change occurring:

(i) if the household's gross income exceeds 185% of the adjusted standard needs budget;

(ii) a change of address;

(iii) if any eligible child leaves the household and the household receives FEP, FEPTP or AA;

(iv) if a parent, step-parent, spouse, or former spouse moves into the household or if a marriage or adoption occurs with or between the already reported household members;

(v) if a child becomes eligible for foster care or subsidized adoption financial assistance;

(vi) a change in student status of a child in the household;

(vii) if a client receiving TCA is not longer employed or is working less than an average of 30 hours per week;

(viii) if there is a change in disability status of a GA client; and/or

(ix) if a GA client becomes employed.

(3) Households that do not meet the requirements of paragraph (2)(a) of this section will be assigned a review month. In addition to the ten-day reporting requirements listed in paragraph (2)(b) of this section, the household must report, by the last day of the review month, all material changes that have

occurred since the last review, or the date of application if it is the first review. The household is also required to accurately complete all review forms and reports as requested by the Department.

(4) Most changes which result in an increase of assistance will become effective the month following the month in which the report of the change was made. If verification is necessary, verification and changes will be made in the month following the month in which verification was received. If the change is to add a person to the household, the person will be added effective on the date reported, provided necessary verification is received within 30 days of the change. If verification is received after 30 days, the increase will be made effective the date verification was received.

R986-100-114. A Client's Continuing Obligation to Provide Verification and Information.

(1) A client who is eligible for assistance must provide additional verification and information, which may affect household eligibility or ongoing eligibility, after the application is approved if requested by the Department.

(2) The client must provide information to determine if eligibility was appropriately established and if payments made under these rules were appropriate. This information may be requested by an employee of the Department or a person authorized to obtain the information under contract with the Department such as an employee of ORS.

R986-100-114a. Determining When a Document or Information is Considered Received by the Department.

(1) The date of receipt of a document filed with the Department is the date the document is actually received by the Department and not the post mark date. Any document or information received after 5 p.m. by Fax, postal mail, email or hand delivery, will be considered received the next day Department offices are open. If an application for assistance or other information is filed through the "myCase" system, it will be considered received the day it was filed online even if it is filed after 5 p.m. or on a Saturday, Sunday, or legal holiday.

(2) If a document has a due date and that due date falls on a Saturday, Sunday, or legal holiday, the time permitted for filing the document will be extended to 5 p.m. on the next day Department offices are open.

(3) "Document" as used in this section means application for assistance, verification, report, form and written notification of any kind.

(4) A verbal report or notification will be considered received on the date the client talks to a Department representative. A voice message received after 5 p.m. will be considered received the next day Department offices are open.

R986-100-115. Underpayment Due to an Error on the Part of the Department.

(1) If it is determined that a client was entitled to assistance but, due to an error on the part of the Department, assistance was not paid, the Department will correct its error and make retroactive payment.

(2) If a client receives assistance payments and it is later discovered that due to Department error the assistance payment should have been made at a higher level than the client actually received, retroactive payment will be made to correct the Department's error.

(3) If the client's public assistance was terminated due to the error, the client will be notified and assistance, plus any retroactive payments, will commence immediately.

(4) An underpayment found to have been made within the last 12 calendar months will be corrected and issued to the client. Errors which resulted in an underpayment which were made more than 12 months prior to the date of the discovery of

the error are not subject to a retroactive payment.

(5) Retroactive payment under this section cannot be made for any month prior to the date on which the application for assistance was completed.

(6) The client must not have been at fault in the creation of the error.

R986-100-116. Overpayments.

(1) A client is responsible for repaying any overpayment for any program listed in R986-100-102 regardless of who was at fault in creating the overpayment.

(2) Underpayments may be used to offset an overpayment for the same program.

(3) If a change is not reported as required by R986-100-113 it may result in an overpayment.

(4) The Department will collect overpayments for all programs listed in R986-100-102 as provided by federal regulation for food stamps unless otherwise noted in this rule or inconsistent with federal regulations specific to those other programs.

(5) This rule will apply to overpayments determined under contract with the Department of Health.

(6) If an obligor has more than one overpayment account and does not tell the Department which account to credit, the Department will make that determination.

R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPV's).

(1) Any person, including a child care provider, who is at fault in obtaining or attempting to obtain, an overpayment of assistance, as defined in Section 35A-3-602 from any of the programs listed in R986-100-102 or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

(a) knowingly making false or misleading statements;
(b) misrepresenting, concealing, or withholding facts or information;

(c) posing as someone else;

(d) knowingly taking, using or accepting a public assistance payment the party knew or should have known they were not eligible to receive or not reporting the receipt of a public assistance payment the individual knew or should have known they were not eligible to receive;

(e) not reporting a material change as required by and in accordance with these rules;

(f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity; or

(g) accessing TANF public assistance funds through an electronic benefit transfer, including through an automated teller machine or point-of-sale device, in an establishment in the state that;

(i) exclusively or primarily sells intoxicating liquor,
(ii) allows gambling or gaming, or
(iii) provides adult-oriented entertainment where performers disrobe or perform unclothed.

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).

(3) When the Department determines or receives notice from a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type for the time period as set forth in rule, statute or federal regulation.

(4) Disqualifications run concurrently.

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If an individual has been disqualified in another state, the disqualification period for the IPV in that state will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other state count toward determining the length of disqualification in Utah.

(7) The client will be notified that a disqualification period has been determined. The disqualification period shall begin no later than the second month which follows the date the client receives written notice of the disqualification and continues in consecutive months until the disqualification period has expired.

(8) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

R986-100-118. Additional Penalty for a Client Who Intentionally Misrepresents Residence.

A person who has been convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence in order to receive assistance simultaneously from two or more states is disqualified from receiving assistance for any and all programs listed in R986-100-102 above, for a period of 10 years. This applies even if Utah was not one of the states involved in the original fraudulent misrepresentation.

R986-100-118a. Improper Access of Public Assistance Benefits.

(1) A client may not access assistance payments through an electronic benefit transfer, including through an automated teller machine or point-of-sale device, in an establishment in the state that;

(a) exclusively or primarily sells intoxicating liquor,
(b) allows gambling or gaming, or
(c) provides adult-oriented entertainment where performers disrobe or perform unclothed.

(2) Violation of the provisions of subsection (1) of this section will result in;

(a) a warning letter for the first offense,
(b) a one month disqualification for the second offense, and

(c) a three month disqualification for the third and all subsequent offenses.

R986-100-119. Reporting Possible Child Abuse or Neglect.

When a Department employee has reason to believe that a child has been subjected to abuse or neglect, it shall be reported under the provisions of Section 62A-4a-401 et seq.

R986-100-120. Discrimination Complaints.

(1) Complaints of discrimination can be made in person, by phone, or in writing to the local office, the Office of the Executive Director or the Director's designee, the Department's Equal Opportunity Officer, or the appropriate Federal agency.

(2) Complaints shall be resolved and responded to as quickly as possible.

(3) A record of complaints will be maintained by the local office including the response to the complaint.

(4) If a complaint is made to the local office, a copy of the complaint together with a copy of the written response will be sent to the Office of the Executive Director or the Director's designee.

(5) Discrimination complaints pertaining to the Food Stamp Program will also be sent to the Secretary of Agriculture or the Administrator of Food and Nutrition Service, Washington, D.C., 20250 in accordance with the provisions of

7 CFR 272.6 (1999).

R986-100-121. Agency Conferences.

(1) Agency conferences are used to resolve disputes between the client and Department staff.

(2) Clients or Department staff may request an agency conference at any time to resolve a dispute regarding a denial or reduction of assistance.

(3) Clients may have an authorized representative attend the agency conference.

(4) An agency conference will be attended by the client's employment counselor and the counselor's supervisor unless the client or the supervisor request that the employment counselor not attend the conference.

(5) If an agency conference has previously been held on the same dispute, the Department may decline to hold the requested conference if, in the judgment of the employment counselor's supervisor, it will not result in the resolution of the dispute.

(6) If the Department requests the agency conference and the client fails to respond, attend or otherwise cooperate in this process, documentation in the case file of attempts by the staff to follow these steps will be considered as compliance with the requirement to attempt to resolve the dispute.

(7) An agency conference may be held after a client has made a request for hearing in an effort to resolve the dispute. If so, the client must be notified that failure to participate or failure to resolve the dispute at the agency conference will not affect the client's right to proceed with the hearing.

R986-100-122. Advance Notice of Department Action.

(1) Except as provided in (2) below, clients will be notified in writing when a decision concerning eligibility, amount of assistance payment or action on the part of the Department which affects the client's eligibility or amount of assistance has been made. Notice will be sent prior to the effective date of any action to reduce or terminate assistance payments. The Department will send advance notice of its intent to collect overpayments or to disqualify a household member.

(2) Except for overpayments, advance notice is not required when:

(a) the client requests in writing that the case be closed;

(b) the client has been admitted to an institution under governmental administrative supervision;

(c) the client has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(d) the client's whereabouts are unknown and mail sent to the client has been returned by the post office with no forwarding address;

(e) it has been determined the client is receiving public assistance in another state;

(f) a child in the household has been removed from the home by court order or by voluntary relinquishment;

(g) a special allowance provided for a specific period is ended and the client was informed in writing at the time the allowance began that it would terminate at the end of the specified period;

(h) a household member has been disqualified for an IPV in accordance with 7 CFR 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member;

(i) the Department has received factual information confirming the death of a client or payee if there is no other relative able to serve as a new payee;

(j) the client's certification period has expired;

(k) the action to terminate assistance is based on the expiration of the time limits imposed by the program;

(l) the client has provided information to the Department,

or the Department has information obtained from another reliable source, that the client is not eligible or that payment should be reduced or terminated;

(m) the Department determines that the client willfully withheld information or;

(n) when payment of financial assistance is made after performance under R986-200-215 and R986-400-454 no advance notice is needed when performance requirements are not met.

(3) For food stamp recipients and recipients of assistance under R986-300, no action will be taken until ten days after notice was sent unless one of the exceptions in (2)(a) through (k) above apply.

(4) Notice is complete if sent to the client's last known address. If notice is sent to the client's last known address and the notice is returned by the post office or electronically with no forwarding address, the notice will be considered to have been properly served. If a client elects to receive correspondence electronically, notice is complete when sent to the client's last known email address and/or posted to the client's Department sponsored web page.

R986-100-123. The Right To a Hearing and How to Request a Hearing.

(1) A client has the right to a review of an adverse Department action by requesting a hearing.

(2) In cases where the Department sends notice of its intent to take action to collect an alleged overpayment but there is no alleged overpayment of food stamps, the client must request a hearing in writing or orally within 30 days of the date of notice of agency action. In all other cases, the client must request a hearing in writing or orally within 90 days of the date of the notice of agency action with which the client disagrees.

(3) Only a clear expression by the client to the effect that the client wants an opportunity to present his or her case is required.

(4) The request for a hearing can be made at the local office or the Division of Adjudication.

(5) If the client disagrees with the level of food stamp benefits paid or payable, the client can request a hearing within the certification period, even if that is longer than 90 days.

(6) If a request for restoration of lost food stamp benefits is made within one year of the loss of benefits a client may request a hearing within 90 days of the date of the denial of restoration.

(7) In the case of an overpayment and/or IPV the obligor may contact the presiding officer and attempt to resolve the dispute. If the dispute cannot be resolved, the obligor may still request a hearing provided it is filed within the time limit provided in the notice of agency action.

R986-100-124. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act.

(3) Hearings for all programs listed in R986-100-102 and overpayments and IPV's in Section 35A-3-601 et seq. are declared to be informal.

(4) Hearings are conducted by an ALJ or a Hearing Officer in the Division of Adjudication. A Hearing Officer has all of the same rights, duties, powers and responsibilities as an ALJ under these rules and the terms are interchangeable.

(5) Hearings are scheduled as telephone hearings. Every party wishing to participate in the telephone hearing must call the Division of Adjudication before the hearing and provide a telephone number where the party can be reached at the time of the hearing. If the client fails to call in advance, as required by

the notice of hearing, the appeal will be dismissed.

(6) If a client requires an in-person hearing, the client must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. Requests will only be granted if the client can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and fair hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Appeals Unit unless the ALJ determines that another location is more appropriate. A client can participate from the local Employment Center.

(7) the Department is not responsible for any travel costs incurred by the client in attending an in-person hearing.

(8) the Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

R986-100-125. When a Client Needs an Interpreter at the Hearing.

(1) If a client notifies the Department that an interpreter is needed at the time the request for hearing is made, the Department will arrange for an interpreter at no cost to the client.

(2) If an interpreter is needed at the hearing by a client or the client's witness(es), the client may arrange for an interpreter to be present at the hearing who is an adult with fluent ability to understand and speak English and the language of the person testifying, or notify the Division of Adjudication at the time the appeal is filed that assistance is required in arranging for an interpreter.

R986-100-126. Procedure For Use of an Interpreter.

(1) The ALJ will be assured that the interpreter:

(a) understands the English language; and

(b) understands the language of the client or witness for whom the interpreter will interpret.

(2) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(3) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

(4) The interpreter will be instructed to translate to the client the explanation of the hearing procedures as provided by the ALJ.

R986-100-127. Notice of Hearing.

(1) All interested parties will be notified by mail at least 10 days prior to the hearing.

(2) Advance written notice of the hearing can be waived if the client and Department agree.

(3) The notice shall contain:

(a) the time, date, and place, or conditions of the hearing.

If the hearing is to be by telephone, the notice will provide the number for the client to call and a notice that the client can call the number collect;

(b) the legal issues or reason for the hearing;

(c) the consequences of not appearing;

(d) the procedures and limitations for requesting rescheduling; and

(e) notification that the client can examine the case file prior to the hearing.

(4) If a client has designated a person or professional

organization as the client's agent, notice of the hearing will be sent to that agent. It will be considered that the client has been given notice when notice is sent to the agent.

(5) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived, if the Department and the client agree, after a full verbal explanation of the issues and potential results.

(6) The client must notify any representatives, including counsel and witnesses, of the time and place of the hearing and make necessary arrangements for their participation.

(7) The notice of hearing will be translated, either in writing or verbally, for certain clients participating in the RRP program in accordance with RRP regulations.

R986-100-128. Hearing Procedure.

(1) Hearings are not open to the public.

(2) A client may be represented at the hearing. The client may also invite friends or relatives to attend as space permits.

(3) Representatives from the Department or other state agencies may be present.

(4) All hearings will be conducted informally and in such manner as to protect the rights of the parties. The hearing may be recorded.

(5) All issues relevant to the appeal will be considered and decided upon.

(6) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(7) All parties may testify, present evidence or comment on the issues.

(8) All testimony of the parties and witnesses will be given under oath or affirmation.

(9) Any party to an appeal will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted.

(10) The ALJ will direct the order of testimony and rule on the admissibility of evidence.

(11) Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence including hearsay, may be accepted and will be given its proper weight.

(12) Official records of the Department, including reports submitted in connection with any program administered by the Department or other State agency may be included in the record.

(13) The ALJ may request the presentation of and may take such additional evidence as the ALJ deems necessary.

(14) The parties, with consent of the ALJ, may stipulate to the facts involved. The ALJ may decide the issues on the basis of such facts or may set the matter for hearing and take such further evidence as deemed necessary to determine the issues.

(15) The ALJ may require portions of the evidence be transcribed as necessary for rendering a decision.

(16) Unless the client requests a continuance, the decision of the ALJ will be issued within 60 days of the date on which the client requests a hearing.

(17) A decision of the ALJ which results in a reversal of the Department decision shall be complied with within 10 days of the issuance of the decision.

R986-100-129. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of the client or the Department.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not

received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must show cause for the request.

(d) Normally, a party will not be granted more than one request for a continuance.

(3) The rescheduled hearing must be held within 30 days of the original hearing date.

R986-100-130. Default Order or Dismissal for Failure to Participate.

(1) The Department will issue a default order if an obligor in an IPV or IPV overpayment case fails to participate in the administrative process. Participation for an obligor means:

(a) signing and returning to the Department an approved stipulation for repayment and making all of the payments as agreed,

(b) requesting and participating in a hearing, or

(c) paying the overpayment in full.

(2) If a hearing has been scheduled at the request of a client or an obligor in a case not involving an IPV and the client or obligor fails to appear at or participate in the hearing, either in person or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, dismiss the request for a fair hearing.

(3) A default order will be based on the record and best evidence available at the time of the order.

R986-100-131. Setting Aside A Default or Dismissal and/or Reopening the Hearing After the Hearing Has Been Concluded.

(1) Any party who fails to participate personally or by authorized representative as defined in R986-100-130 may request that the default order or dismissal be set aside and a hearing or a new hearing be scheduled. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened.

(2) The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the ALJ or presiding officer who issued the default order or dismissal within ten days of the issuance of the default or dismissal. If the request is made after the expiration of the ten-day time limit, the party requesting reopening must show good cause for not making the request within ten days.

(3) The ALJ has the discretion to schedule a hearing to determine if a party requesting that a default order or dismissal be set aside or a reopening satisfied the requirements of this rule or may grant or deny the request on the basis of the record in the case.

(4) If a presiding officer issued the default or dismissal, the officer shall forward the request to the Division of Adjudication. The request will be assigned to an ALJ who will then determine if the party requesting that the default or dismissal be set aside or that the hearing be reopened has satisfied the requirements of this rule.

(5) The ALJ may, on his or her own motion, reschedule, continue or reopen a case if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness. A presiding officer may, on his or her own motion, set aside a default or dismissal on the same grounds.

(6) If a request to set aside the default or dismissal or a request for reopening is not granted, the ALJ will issue a decision denying the request to reopen. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A defaulted party may appeal a denial of a request to set aside a default or dismissal by following the procedure in R986-100-135. The appeal can only contest the denial of the request to set aside the default and not

the underlying merits of the case. If the default or dismissal is set aside on appeal, the Executive Director or designee may rule on the merits or remand the case to an ALJ for a ruling on the merits on an additional hearing if necessary.

R986-100-132. What Constitutes Grounds to Set Aside a Default or Dismissal.

(1) A request to reopen or set aside for failure to participate:

(a) will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;

(b) may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(i) the danger that the party not requesting reopening will be harmed by reopening,

(ii) the length of the delay caused by the party's failure to participate including the length of time to request reopening,

(iii) the reason for the request including whether it was within the reasonable control of the party requesting reopening,

(iv) whether the party requesting reopening acted in good faith, and

(v) whether the party was represented by another at the time of the hearing. Because they are required to know and understand Department rules, attorneys and professional representatives are held to a higher standard, and

(vi) whether based on the evidence of record and the parties arguments or statements, setting aside the default and taking additional evidence might effect the outcome of the case.

(2) Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

R986-100-133. Canceling an Appeal and Hearing.

When a client notifies the Division of Adjudication or the ALJ that the client wants to cancel the hearing and not proceed with the appeal, a decision dismissing the appeal will be issued. This decision will have the effect of upholding the Department decision. The client will have ten days in which to reinstate the appeal by filing a written request for reinstatement with the Division of Adjudication.

R986-100-134. Payments of Assistance Pending the Hearing.

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate food stamps or RRP financial assistance if the client's request for a hearing is received no later than 10 days after the date of the notice of the reduction, or termination. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client can show good cause for not requesting the hearing within 10 days of the notice, assistance may be continued if the client can show good cause for failing to file in a timely fashion. Good cause in this paragraph means that the delay in filing was due to circumstances beyond the client's control or for circumstances which were compelling and reasonable. Because the Department allows a client to request a hearing by telephone or mail, good cause does not mean illness, lack of transportation or temporary absence.

(3) A client can request that payment of assistance not be continued pending a hearing but the request must be in writing.

(4) If payments are continued pending a hearing, the client is responsible for any overpayment in the event of an adverse decision.

(5) If the decision of the ALJ is adverse to the client, the client is not eligible for continued assistance pending any appeal of that decision.

(6) If a decision favorable to the client is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

(7) Financial assistance payments under FEP, FEPTP, GA or WTE, and CC subsidies will not continue during the hearing process regardless of when the appeal is filed.

(8) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

(9) Assistance is not allowed pending a hearing from a denial of an application for assistance.

R986-100-135. Further Appeal From the Decision of the ALJ or Presiding Officer.

Either party has the option of appealing the decision of the ALJ or presiding officer to either the Executive Director or person designated by the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ or presiding officer. If a request for a fair hearing is not timely filed under R986-100-123, there are no further appeal rights.

KEY: employment support procedures

October 1, 2016

Notice of Continuation September 2, 2015

35A-3-101 et seq.

35A-3-301 et seq.

35A-3-401 et seq.

R986. Workforce Services, Employment Development.**R986-200. Family Employment Program.****R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.**

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least \$500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

- (a) receipt of disability benefits from SSA;
- (b) 100% disabled by VA; or
- (c) by submitting a written statement from:
 - (i) a licensed medical doctor;
 - (ii) a doctor of osteopathy;
 - (iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(iv) a licensed Advanced Practice Registered Nurse; or
 (v) a licensed Physician's Assistant.
 (d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning \$500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

R986-200-203. Citizenship and Alienage Requirements.

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

- (a) who is paroled into the United States under section

212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony, or who are violating parole or probation for a felony or a misdemeanor, are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting, sign a FEP Agreement, and negotiate and sign an employment plan within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

(5) If a parent in the financial assistance household received TANF funded financial assistance benefits from another state or from a tribe, the entire household is ineligible to receive TANF funded financial assistance in Utah the same

month. This is true even if household composition has changed. If a child in the household has received TANF funded financial assistance in another household, in this or any other state, the child will be excluded from the household determination in the same month according to the provisions of R986-200-205(2)(d). TANF funded financial assistance in Utah is FEP, FEP-TP, Emergency Assistance and AA.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents, parents listed on the birth certificate and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(d) a child who was counted as a dependent in a household that received TANF funded financial assistance or in a specified relative household in the same month. A child cannot be counted as a dependent in two households that receive TANF funded financial assistance or specific relative assistance in the same month.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are

counted:

(a) all absent household members who are not required to participate in an employment plan under R986-200-210 and who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included. If the household member is required to participate in an employment plan, the household member must be included.

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(f) if the only adult in the household is temporarily absent, the dependent child or children must be left under the care of an adult or benefits will be denied;

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-206. Participation Requirements.

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and
 (c) assisting ORS in good faith to:
 (i) establish the paternity of all minor children; and
 (ii) establish and enforce child support obligations.
 (d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

R986-200-207. Participation in Child Support Enforcement.

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18;

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;

(c) is emancipated by marriage or court order;

(d) is a member of the armed forces of the United States;

or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also

cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non-cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits;

(c) the client is participating in FEPTP; or

(d) the client is an undocumented alien parent.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, undocumented alien parent, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records; or

(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be

significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department

upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 30 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(2) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) When an employment counselor discovers that a client is not complying with his or her employment plan, the employment counselor will attempt to discuss compliance with the client and explore solutions. The employment counselor will also send written notice of the failure to comply to the client. The notice will specify a date certain by which the client must comply and the consequences of not complying by that date.

(2) If compliance is not resolved by the date specified in the notice sent under subsection (1) of this section, the employment counselor will send a second written notice and initiate termination of the household financial assistance. This second notice will advise the client that the financial assistance will terminate at the end of that month unless the client resolves the problem, as provided in paragraph (2)(a) of this section. This second notice will also provide a date certain by which the compliance problems must be resolved for benefits to continue.

(a) If the client establishes reasonable cause for not complying with the employment plan or provides required documentation by the date specified in the first or second notice, financial assistance will continue or be restored.

(b) If the compliance problem is not resolved as provided in subparagraph (a) of this subsection, the household will be ineligible for financial assistance for one full month. The client must then reapply for financial benefits and successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to comply with the employment plan during the two week trial period.

(4) The two week trial period may be waived only if the client has cured all previous compliance issues prior to re-application.

(5) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(6) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(7) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(8) Reasonable cause can also be established, as provided

in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(9) If a client is also receiving food stamps and the client is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and sisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great-great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated;

(m) former stepparents

(n) a Native American adult who has a Native American child placed in, or living in that adult's home, and both the child and the adult are members of, or eligible for membership in, a federally recognized tribe; and

(o) an adult of the same ethnicity, culture, country of origin, religion, language and/or nationality as the refugee/asylee child in his or her care.

(2) The specified relative must provide proof of relationship to the child. If the specified relative is unable to provide proof, but DCFS has determined that one of the relationships in subparagraph (1) of this section exists, the Department will accept the DCFS determination. DCFS will not be liable for any potential overpayment resulting from a determination made regarding relationship.

(3) The Department shall require compliance with Section 30-1-4.5

(4) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, FEP rules apply.

(5) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated, or have a blood relationship to a dependent child who is in the home and who is included in the household for assistance purposes. This does not apply to specified relatives who are eligible under subsection (1)(n) and (o) of this section;

(6) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(7) The child must be currently living with, and not just visiting, the specified relative;

(8) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(9) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(10) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(11) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(12) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(13) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(14) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household. Eligible refugee households with two able-bodied parents and at least one dependent child, must first exhaust RRP benefits before considering eligibility for FEPTP.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. Refugee families may participate in any combination of eligible and priority activities for a combined total of 60 hours per week, as provided in the employment plan.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8).

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determined by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

(a) the applicant's employment history;

(b) the likelihood that the applicant will obtain immediate full-time employment;

(c) the applicant's housing stability; and

(d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforeseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the

client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment will equal three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating diversion.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made, the client is ineligible for FEP for the three months covered by the diversion payment and must reapply at the end of the three month period.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

(10) A household can only receive one diversion assistance payment in a 12 month period.

R986-200-217. Time Limits.

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) diversion assistance does not count toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an exception under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An exception under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the

home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted;

(i) the client is currently participating in the Intergenerational Welfare Dependency Poverty Pilot Program, "Next Generation Kids" and needs additional time to obtain job training and preparation to decrease the risk of his/her children being part of intergenerational welfare dependency. This exception will not be available if the Pilot Program is to end; or

(j) parents who volunteer to fully participate in a Department-approved employment and training activity. Department approval will only be granted if all the requirements of Department rule 986-200-211(1)(a) through (f) are met.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment;

or

(f) neglect or deprivation of medical care.

(3) Employment extension. An extension to the time limit can be granted for a maximum of an additional 24 months if during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage.

(a) If, at the end of the 24-month extension, the parent client qualifies for an exception under subsections (1) or (2) of this section, an exception can be granted under the provisions of those sections.

(b) A family cannot receive financial assistance for more than a total of 60 months unless an exception can be granted under subsections (1) and (2) of this section.

(4) All clients receiving an extension or an exception must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions or extension listed above. Both parents need not meet the same exception or extension.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons for an exception in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application

process to determine eligibility for assistance from those other programs.

(8) Exceptions and extensions are subject to a review at least once every six months.

R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of \$450 for rent on April 1 and requests an additional EA payment of \$300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed \$450 per family for one month's rent payment or \$700 per family for one month's mortgage payment, and \$300 for one month's utilities payment.

R986-200-220. Mentors.

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

(a) develop life skills;

(b) implement an employment plan; or

(c) obtain services and support from:

(i) the volunteer mentor;

(ii) the Department; or

(iii) civic organizations.

R986-200-221. Drug Testing Requirements.

(1) A parent client or specified relative who is counted in the household assistance unit under R986-200-205 must complete a substance abuse questionnaire. A substance abuse questionnaire is defined as a written screening questionnaire designed to accurately determine the reasonable likelihood of

the client having a substance use disorder involving the misuse of a controlled substance. Individuals in the household who have been disqualified from the receipt of assistance because of an IPV are also required to complete a substance abuse questionnaire and otherwise comply with this section.

(2) If the results of the substance abuse questionnaire indicate a reasonable likelihood of a substance use disorder involving the misuse of a controlled substance, a drug test is required within a period of time as specified by the Department. The test will be administered with due regard to the privacy and dignity of the person being tested. Before or after taking the drug test, the client may advise the person administering the test of any prescription or any over the counter medication the client is taking.

(3) If the client tests positive for the unlawful use of a controlled substance on the drug test required under subsection (2), benefits may continue but only if the client agrees to receive treatment from a Department approved provider. The treatment will be for a minimum of 60 days and the client must also submit to drug tests during, and at the conclusion of, treatment. Each test must be negative. The length of treatment, if over 60 days, will be determined by the treatment provider and the Department. The client cannot change treatment providers unless the treatment provider and the Department agree to the change.

(4) The entire household unit will be denied financial assistance for a period of three months for the first occurrence and 12 months for any subsequent occurrence within a 12 month period if a client identified in subsection (1):

(a) refuses to complete a substance abuse questionnaire;

(b) refuses to meet with a licensed clinical therapist if required by the Department;

(c) refuses to take a drug test as required in subsection (2) or (3) of this section,

(d) fails to enter and successfully complete treatment as required in subsection (3) of this section, or

(e) 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:

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 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/and 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

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35A-3-301 et seq.

R986. Workforce Services, Employment Development.

R986-700. Child Care Assistance.

R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment for U.S. citizens and qualified aliens authorized to work in the U.S. Child care for approved education and training activities and job search may be authorized in accordance with rule.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) Payments are issued monthly based on a client's eligibility for services in that month. The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where the client is working for an approved child care center, regularly watches children other than her own, and does not have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care

even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed once every twelve months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department may reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Care About Child Care agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) A client is not required to report certain allowable temporary changes, as defined in Department policy, when the circumstances are expected to last three months or less. However, temporary changes will be acted upon when they are known to the Department. Temporary changes lasting more than three months must be reported to the Department following general reporting requirement time frames. A client must have received an ESCC payment and met the work requirement for a minimum of 30 days before receiving a temporary change payment or a subsequent temporary change payment.

(7) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10

days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(8) If an overpayment is established and it is determined that the client was at fault in the creation of the overpayment, the client must repay the overpayment to the Department. In some situations, the client and provider may be jointly liable. In the case of joint liability, both parties can be held liable for the entire overpayment.

(9) The Department is authorized to release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) the date the child care subsidy was issued;

(c) the subsidy amount for that provider;

(d) the copayment amount;

(e) information available in the Department Provider Portal. The Provider Portal provides a provider with computer access to limited, secure information;

(f) the month the client is scheduled for review;

(g) the date the client's application was received; and

(h) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.

(10) If a client uses a child care provider at least eight hours by the 15th of the calendar month, and that provider has been paid for that month, the Department will not pay another provider for child care for the rest of that month even if the client changed providers. However, if it is the provider that decided not to provide care and the client is required to change providers, the Department may pay that second provider for a portion of that same month.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. All eligible providers, including providers who receive CC grants from the Department, must meet all Child Care Development Fund (CCDF) requirements. The only eligible providers are:

(a) providers regulated through Department of Health Child Care Licensing (CCL):

(i) licensed homes;

(ii) licensed child care centers; and

(iii) homes with a residential certificate.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status from CCL; or

(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.

(2) The following providers are not eligible for receipt of a CC payment:

(a) a provider living in the same home as the parent client unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;

(b) a sibling of the child living in the home can never be approved, even for a special needs child;

(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(d) undocumented aliens;

(e) persons under age 18;
 (f) a provider providing care for the child in another state;
 (g) a sponsor of a qualified alien client applying for child care assistance;
 (h) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run, any resulting overpayment has been satisfied, and the provider is otherwise eligible;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not provide necessary information or cooperate with a Department investigation or audit or is not an approved provider; or

(k) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment.

(3) FFN providers must comply with all CCDF and Department requirements and will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:

(a) complete, sign and submit an application to CCL;

(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy, including ongoing training, as explained in the orientation;

(c) pass a home inspection as provided in Department policy;

(d) complete an infant/child CPR training;

(e) complete first aid training; and,

(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.

(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC Provider must complete an announced inspection and show compliance with all regulations at least 30 calendar days before the expiration date of the current approval.

(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

(7) A FFN provider or applicant has a right to file an appeal when an adverse action has been taken against him or her in regards to FFN approval status or health and safety compliance. Prior to filing an appeal, the provider or applicant must request a review with the CCL manager. If unresolved after that review, the provider may file an appeal by requesting a fair hearing with DWS in accordance with R986-100-123 et seq.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect copayments and any other fees for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers may retain the full monthly subsidy payment so long as at least eight hours of care were provided by the 15th of the month. The subsidy payment is to support an eligible client's monthly employment and training activities and allows for temporary absences and unforeseen circumstances. Having a child only attend one day per month or sporadically to receive a child care payment is a misuse of funds and will result in an overpayment and possible child care disqualification. Additionally, the subsidy payment is intended to be used to

cover the provider's business expenses during the month for reserving the slot(s) and shall not be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service. Providers who choose not to apply the funds as required will be subject to an overpayment and possible child care disqualification.

(4) Providers must keep accurate records of subsidized child care payments, and time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least three years.

(5) Providers must provide initial verification information to determine eligibility. Providers must also cooperate with an investigation or audit to determine ongoing eligibility or if eligibility was correctly determined. Cooperation includes providing information and verification and returning telephone calls or responding to emails from Department employees or other persons authorized by the Department to obtain information such as an employee of ORS in a timely manner. "A timely manner" is usually considered to be ten business days for written documentation and two business days to return a phone call or email request. Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the eligibility. Failure to disclose a material fact that might affect the eligibility determination can also lead to criminal prosecution. If a provider fails to cooperate with an investigation or audit, provide any and all information or verification requested, or fails to keep records for one year without good cause, the provider will no longer be an approved provider. Good cause is limited to circumstances where the provider can show that the reasons for the delay in filing were due to circumstances beyond the provider's control or were compelling and reasonable. The period the provider will not be an approved provider will be from the date the information or verification was due until when it is received by the Department.

(6) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider is responsible for repayment of the resulting overpayment and there may be a disqualification period and/or criminal prosecution.

(7) CCL will keep a list of all providers that have been disqualified as a provider or against whom a referral or complaint is received.

(8) All providers, except FFN providers as defined in R986-700-705(1)(b)(ii), are required to report their monthly, full-time child care rates to the local Care About Child Care agency. All providers must also report the rate for each individual child to the Department if the amount is less than the rate reported to Care About Child Care. Failure to report reduced rates may result in an overpayment.

(9) Providers are required to access the Provider Portal at jobs.utah.gov/childcare and:

(a) submit and manage bank account information;

(b) read and agree to the terms and conditions contained in the Provider Guide and in the Portal;

(c) view child care payment information;

(d) manage Provider Portal user access to ensure only those users with authority to make changes can do so. The provider is liable for all changes made and information provided through the Provider Portal;

(e) report the following changes within 10 days, or by the 25th of the month, whichever is sooner:

(i) a reduced or part-time rate for an individual child in care, as applicable. This includes reporting any rate changes or updates that occur for each child once a rate has been submitted in the portal;

(ii) a child is no longer in child care;

- (iii) a child was not in child care during that month;
 - (iv) that the provider received a greater subsidy payment amount than what was charged to the client for the month of service. Excess subsidy funds cannot be used to cover outstanding balances, copayments, or future services. The provider should notify the Department and the difference will either be deducted from the next month's subsidy payment or the funds must be returned to the Department;
 - (v) that a child attended for less than eight hours by the 15th of the month, payment for the month was received and the child is not expected to return; or
 - (vi) a change in financial institution account information for direct deposit.
- (10) Providers must submit a W-9 Form, Federal Employee Identification Number or Social Security Number via the DWS Provider Portal, if required by the Department, and a 1099 will be issued annually.
- (11) A provider who provides services for any part of a month and then terminates services with the client/child during the month, must reimburse the Department for the days when care was not provided. However, if it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

R986-700-707. Copayment.

- (1) "Copayment" means a dollar amount which is deducted by the Department from the standard CC subsidy for Employment Support CC. The copayment is determined on a sliding scale and the amount of the copayment is based on the parent(s) countable earned and unearned income and household size.
- (2) The parent is responsible for paying the amount of the copayment directly to the child care provider.
- (3) If the copayment exceeds the actual cost of child care, the family is not eligible for child care assistance.
- (4) The Department will deduct the full monthly copayment from the subsidy even if the client receives CC for only part of the month.
- (5) The following clients are not subject to the copayment requirement:
- (a) clients at or below 100% of the poverty level;
 - (b) clients receiving transitional child care and FEP CC as provided in rule R986-700-708.

R986-700-708. FEP CC Transitional Child Care.

- (1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan.
- (2) Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased earned income and the household meets the work requirement and income rules for ESCC. Clients receiving transitional child care are not subject to the copayment requirement. The copayment will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not. A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-709. Employment Support (ES) CC.

- (1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC

will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

- (2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). An exception may be made to the minimum work requirements with Department approval when both parents are employed at their full capacity and provide requested documentation and/or verification. CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning \$500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity except if approved by the Department. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify the incapacity and why the incapacity prohibits them from providing care for their children in the following ways:

(i) receipt of disability benefits from SSA if it proves the incapacity prohibits the client from providing care for their children;

(ii) 100% disabled by VA if it proves the incapacity prohibits the client from providing care for their children; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self-employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income and Asset Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative

may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted. Recipients of SSI benefits are included in the household assistance unit.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted;

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted; and

(iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first \$50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) \$100 for each person with countable earned income; and

(d) a \$100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the copayment amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

(6) If a non-applicant parent pays a portion of the child care costs directly to the applicant parent, that amount is counted as income. If the non-applicant parent pays the child care provider directly, that amount will be deducted from the subsidy amount. If the court orders the non-applicant to pay one-half of the child care costs, the non-applicant parent must pay one-half of the total cost of child care.

(7) Clients must meet the CCDF asset limit.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) A client may choose to receive continued child care coverage of training participation hours for up to three months during a break in semesters to allow for continuity of care and to reserve the child care slot(s).

(6) Any child care assistance payment to cover training participation hours made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(7) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(8) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(9) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

R986-700-713. Amount of CC Payment.

CC will be paid at the lower of the following levels:

(1) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(2) the rate established by the provider for services and, if required, reported to the local Care About Child Care agency; or

(3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-714. CC Payment Method.

(1) The provider must provide a valid financial account and routing number to allow for payment by direct deposit. For open, ongoing cases, payment will be issued on the first day of

the month for services to be provided during that month. The provider is not an employee of the Department, the Office of Child Care, or the state of Utah even if the provider is only providing care for one client.

(2) Under unusual or extraordinary circumstances, the Department can issue payment by check. If a provider cannot obtain a financial account for direct deposit, the provider must contact the Department and explain why direct deposit is not possible.

(3) In the event that a check is reported as lost or stolen, the provider is required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form. If the original check has been redeemed, the Department will conduct an investigation and the provider may be required to provide a sworn, notarized statement that the signature on the endorsed check is a forgery. If the Department determines the redeemed check was a forgery, the Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice if:

(a) the Department has determined that the client or the provider was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the provider: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible including when a provider accepts payment but does not provide care. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) Even if CC funds are authorized by the Department, a CC provider cannot receive and retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds received and retained by a provider but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and may be disqualified from receipt of further CC subsidy funds as provided in R986-700-718. A provider is considered to have retained subsidy funds if the provider knew or should have known the child would not receive services that month and fails to notify the Department within ten days or the provider does not notify the Department within ten days of the end of the month when the child was not in care at least eight hours that month. If the client does not use at least eight hours of child care by the 15th of the month but uses at least eight hours of child care after the 15th of the month, it may result in a partial overpayment for that month.

(3) In the event that excess funds were issued for the month of service, the payment cannot be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service with a provider. The payment must be returned to the Department or, if possible, the payment for the following month may be reduced to offset the over-issuance. An overpayment may also occur when a provider receives a

greater subsidy payment amount than the client was charged for the month of service.

(4) All CC overpayments must be repaid to the Department.

(a) Client overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct \$10 from each month's CC payment unless the client requests a larger amount.

(b) Provider overpayments. If a provider does not repay any outstanding overpayment within 30 days of notice of the overpayment, the Department will commence collection procedures which may include recouping the overpayment by deducting a portion of the overpayment from ongoing child care subsidies from the Department. This is true even if the child or client no longer receives child care from the provider. The decision whether to recoup the overpayment from ongoing child care payments or to commence collection procedures lies with the Department and not the provider or client/s.

(i) If the Department elects to recoup the overpayment from ongoing child care payments, and the overpayment is less than \$1,000, the Department will recoup the full amount within 90 days. If the overpayment is more than \$1,000 the Department will recoup the amount within six months. If the recoupment presents a hardship because it is more than 50% of the provider's ongoing monthly subsidy amount, the provider can contact the Department to discuss alternative arrangements for repayment.

(ii) If a provider stops providing care and has a balance due on an overpayment, and seeks approval to become a provider at a later date, approval cannot be granted until the overpayment is paid in full even if any disqualification period has expired.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

(7) A CC provider may appeal an overpayment as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment.

(8) If a provider or individual facility fails to enter into a payment plan to repay the overpayment or abide by the terms of the payment plan for 12 consecutive months, the provider will be taken off the approved provider list until all overpayments are paid in full or the arrearage on the payment plan is brought current. This is true even if there is only one overpayment.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m. These additional hours may be supported with child care.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. A maximum of seven hours per day will be approved for sleep time.

(4) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following documenting the child's disability and special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education,

(e) Baby Watch, Early Intervention Program, or

(f) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a licensed Advanced Practice Registered Nurse;

(iii) a licensed Physician's Assistant;

(iv) a licensed or certified Psychologist.

(3) Verification to support that the child is disabled and has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification.

(1) If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment, if there is one, and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider or as a parent:

(a) for a period of one year for the first IPV;

(b) for a period of two years for the second IPV; and

(c) for life for the third IPV.

(2) If the overpayment resulted from parent or provider fault not amounting to fraud or an agency error, the client and/or provider will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault

overpayment.

(4) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment or disqualification. A provider who has been disqualified may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default.

(5) A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

(6) A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

(7) All disqualification periods run concurrently.

(8) A disqualification issued to a provider, including a child care center, under this subsection will follow both the provider, the principal provider, and any successor center or provider.

(a) A "successor" provider, including a child care center, that acquires the business or acquires substantially all of the assets of the provider or child care center. This includes a provider who changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Assets may also include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

R986-700-719. Job Search Child Care (JS CC).

(1) JS CC is available to a client who is otherwise eligible for child care but is separated from his or her job and meets the eligibility criteria.

(2) JS CC is available for a maximum of three additional

months provided the client:

(a) was employed at least 15 hours per week and was permanently separated from his or her job or was receiving child care for an allowable temporary change that did not exceed three months when separated from his or her job;

(b) was receiving ES CC in the month of the job separation and;

(c) reports the job loss within 10 days and requests continued child care payments while searching for a job. In that case, the client will be eligible for one additional month of child care. The month of the job loss does not count.

(3) If the client verifies the job loss in a timely manner, as directed by the Department, a second and third month of CC will be paid while the client looks for a job.

(4) The JS CC extension is only available once in a rolling 12 month period even if the client received only one month of JS CC assistance.

(5) A client is not eligible for JS CC if the client has two or more jobs and is separated from one or more of them but still has one job.

(6) The JS CC copayment will be at the lowest copayment amount required by the Department for the lowest income group, disregarding all earned income.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1).

(2) The provider and each person age 12 years old or older living in the household where the child care is provided must submit to a background check.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and the provider or any person age 12 years old or older living in the household where the child care is provided has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Screening.

(1) The Department will contract with the CCL to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(2) Each client requesting approval of a covered child care provider must submit to CCL a form, which will include a waiver and certification, completed and signed by the child care provider as part of the DWS FFN approved provider process. Additional household members must give permission to run the background check. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted.

(3) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(4) All providers, including caregivers and covered individuals are required to submit fingerprints under these rules as requested. In addition, the Department may conduct background screening annually.

(5) If CCL takes an action adverse to any covered individual based upon the background screening, CCL will send a denial letter to the provider and the covered individual.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor and

(m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.

(3) The Executive Director or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered

individuals to DOH within 48 hours of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

If CCL determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) CCL will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records. The juvenile court records need only be accessed as provided in 35A-3-310.5(2)(c).

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department or CCL may revoke any existing approval and refuse to permit child care in the home until the Department or CCL is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department or CCL denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify CCL. Failure to notify CCL may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

R986-700-775. High Quality School Readiness Grant Program.

(1) The Office of Child Care (OCC) administers this program pursuant to the authority granted in Utah Code Section 53A-1b-106.

(2) The OCC will solicit proposals from eligible private providers and eligible home-based educational technology providers and make recommendations to the School Readiness Board (SRB) as provided in 53A-1b-106(3).

(3) Eligible private providers and eligible home-based educational technology providers must submit an application, together with a proposal to the OCC by the date provided in the application.

(4) The proposal must contain the components outlined in 53A-1b-105(1) or (2) and details as required in 53A-1b-106(7).

(5) A grant recipient must report annually to the OCC the information required in 53A-1b-106(12) in addition to other information as required by the OCC.

R986-700-776. Intergenerational Poverty School Readiness Scholarship Program.

(1) Scholarships are available, as funding permits, for a

child who

(a) will be four years of age on or before September 2 of the school year in which the individual intends to participate in a school readiness program;

(b) has not entered kindergarten; and

(c) is experiencing intergenerational poverty, as determined by the Department.

(2) The Department will mail scholarship applications to individuals who the Department has identified as potentially eligible and who live in an area where one or more high quality preschool programs is available. Individuals who do not receive an application from the Department may still apply by contacting the OCC and requesting an application. The Department will notify potential applicants of the due date for filing a completed application.

(3) An applicant may be required to show that transportation to a high quality preschool program is available if the child does not live within a reasonable commuting distance from the high quality preschool.

(4) An applicant may be required to provide verification and supporting documentation if necessary to determine eligibility.

(5) The value of the scholarship will be determined by which program the parent chooses.

(6) Scholarships are transferable however funds cannot be prorated during a given month. So if a child attends one day or more during a given month at one program, and wishes to transfer to a second program at any time during that month, the full scholarship payment will be made to the first program.

(7) Payment will be made directly to the high quality preschool provider. The provider must send the OCC an invoice at the end of the month, or as soon thereafter as feasible, when services were provided.

R986-700-777. Prioritizing Criteria.

If the Department does not receive sufficient funding to award scholarships to all eligible individuals, the Department will award scholarships by ranking eligible children who are considered at the highest risk according to Department policy. A list of the criteria for determining highest risk is available from the Department.

R986-700-778. Training and Scholarships for Early Childhood Teachers.

The Department may contract without outside entities, as funding permits, to provide training, scholarships and consulting services to assist individuals who intend to receive a Child Development Associate Credential (CDA).

KEY: child care

October 1, 2016

Notice of Continuation September 3, 2015

35A-3-310

53A-1b-110

R993. Workforce Services, Rehabilitation.

R993-100. Authority, Purpose and Administrative Review.

R993-100-101. Authority and Purpose.

(1) This rule is authorized by Sections 35A-1-303 and 35A-13-102.

(2) The purpose of this rule is to specify standards and procedures for resolution and adjudication of disputes under the Vocational Rehabilitation Act.

R993-100-102. Review by the Field Service Director.

(1) If an applicant or client disagrees with any decision made by a vocation rehabilitation (VR) counselor or supervisor he or she may request the decision be reviewed by the Field Service Director under which the disputed determination was made. The request for review must be filed within 30 days of the decision to be reviewed. The request for review must be made in writing and must:

(a) be prepared by the applicant/client or his or her designated representative;

(b) include the name and address of the individual requesting the review;

(c) include the name of the VR counselor or supervisor whose decision is to be reviewed;

(d) describe the decision or decisions to be reviewed in sufficient detail to inform the USOR of the nature and consequences of the decision;

(e) describe the action or resolution desired; and

(f) be signed and dated by the applicant /client or his or her representative.

(2) This process may not be used to delay mediation or an impartial hearing. An applicant/client can choose not to participate in the review process by filing a request for mediation or an impartial hearing at any time. If such a request is filed, the Field Service Director review will end however, the Field Service Director may complete a review summary to be used at later stages of the appeal, if any.

(3) The Field Service Director will conduct an investigation which will include reviewing the applicant/clients record, communication with the applicant/client and relevant USOR staff.

(4) The Field Service Director will issue a written decision within 15 days of receipt of the request for review. The decision will include appeal rights, list a summary of all evidence reviewed, explain the findings of the investigation, and the action to be taken.

R993-100-103. Mediation.

(1) At any point during or after the review process as provided in R993-100-102 an applicant/client may request mediation. A request for mediation does not waive his or her rights to an impartial hearing. The request for mediation must be made within 30 days of the date of the last decision made, whether by the VR, the supervisor, or the Field Service Director. A request for mediation must be made prior to the beginning of an impartial hearing by an Administrative Law Judge. A request for mediation must be in writing, filed with the Division Director, and:

(a) be prepared by the applicant/client or his or her designated representative;

(b) include the name and address of the individual requesting the review;

(c) include the name of the VR counselor or supervisor whose decision is to be reviewed;

(d) describe the decision or decisions to be reviewed in sufficient detail to inform the USOR of the nature and consequences of the decision;

(e) describe the action or resolution desired; and

(f) be signed and dated by the applicant /client or his or her representative.

(2) The mediation cannot be used to delay the right of the applicant/client to an impartial hearing and must be conducted by a qualified and impartial mediator in the Adjudication and Appeals Division of the Department of Workforce Services.

(3) Mediation sessions will be scheduled in a timely manner and will be held by telephone unless the applicant/client requests and needs accommodation for an in-person hearing. In-person hearings will be held at the Adjudication and Appeals Division offices in Salt Lake City.

(4) Any discussions that occur during the mediation process are considered confidential and may not be used in any subsequent hearing or civil proceeding.

(5) Either party or the mediator may elect to terminate the mediation at any time. Notice of the termination will be sent to all parties. In the event mediation is terminated, either party may pursue resolution through an impartial hearing.

(6) Nothing in the mediation process precludes the parties from informally resolving the dispute prior to completion of the process.

(7) The mediation agreement will be reduced to writing. If an agreement cannot be reached, the mediator will summarize the proceedings in writing.

(8) The director may review the request for mediation and if he or she deems it appropriate to deny the request for mediation under 34 CFR 361.57 the parties will be notified in writing of the denial with instructions on how to proceed to an impartial hearing.

R993-100-104. The Right to a Hearing and How to Request a Hearing.

(1) A client or applicant has the right to a review of an adverse division decision or action by requesting a hearing. The request must be in writing and filed within 30 days of the agency decision being appealed, or in the event a mediation was terminated, the date of the notice of the termination. If the applicant/candidate/client requested a prior review or mediation, the request must be filed within 30 days of the decision by the Field Service Director or the mediator.

(2) Only a clear expression by the client to the effect that the client wants an opportunity to present his or her case is required.

(3) The request for a hearing can be made at the local office or the Division of Adjudication.

R993-100-105. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act.

(3) Hearings are conducted by an Administrative Law Judge (ALJ) in the Division of Adjudication.

(4) Hearings are scheduled as telephone hearings. Every party wishing to participate in the telephone hearing must call the Division of Adjudication before the hearing and provide a telephone number where the party can be reached at the time of the hearing. If the client fails to call in advance, as required by the notice of hearing, the appeal will be dismissed.

(5) If a client requires an in-person hearing, the client must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. Requests will only be granted if the client can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and impartial hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in

person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the offices of the Adjudication and Appeals Division unless the ALJ determines that another location is more appropriate.

(6) The Department is not responsible for any travel costs incurred by the client or any of his or her witnesses in attending an in-person hearing.

(7) The Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

R993-100-106. When a Client Needs an Interpreter at the Hearing and Procedure for Use of an Interpreter.

(1) If a client notifies the Department that an interpreter is needed at the time the request for hearing is made, the Department will arrange for an interpreter at no cost to the client.

(2) The ALJ will be assured that the interpreter:

(a) understands the English language; and

(b) understands the language of the client or witness for whom the interpreter will interpret.

(3) The ALJ will instruct the interpreter to interpret as accurately as possible given the communication modality.

(4) If an interpreter is needed to assist a deaf or hearing impaired party, the interpreter must be certified as provided in Rule R993-300 et seq.

(5) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

(6) The interpreter will be instructed to translate to the client the explanation of the hearing procedures as provided by the ALJ.

R993-100-107. Notice of Hearing.

(1) All interested parties will be notified by mail at least 10 days prior to the hearing.

(2) Advance written notice of the hearing can be waived if the client and Department agree.

(3) The notice shall contain:

(a) the time, date, and place, or conditions of the hearing.

If the hearing is to be by telephone, the notice will provide the number for the client to call and a notice that the client can call the number collect;

(b) the legal issues or reason for the hearing;

(c) the consequences of not appearing;

(d) the procedures and limitations for requesting rescheduling; and

(e) notification that the client can examine the case file prior to the hearing.

(4) If a client has designated a person or professional organization as the client's agent, notice of the hearing will be sent to that agent. It will be considered that the client has been given notice when notice is sent to the agent.

(5) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived, if the Department and the client agree, after a full verbal explanation of the issues and potential results.

(6) The client must notify any representatives, including counsel and witnesses, of the time and place of the hearing and make necessary arrangements for their participation.

R993-100-108. Hearing Procedure.

(1) Hearings are not open to the public.

(2) A client may be represented at the hearing. The client may also invite friends or relatives to attend as space permits.

(3) Representatives from the Department or other state agencies may be present.

(4) All hearings will be conducted informally and in such

manner as to protect the rights of the parties. The hearing may be recorded.

(5) All issues relevant to the appeal will be considered and decided upon.

(6) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(7) All parties may testify, present evidence or comment on the issues.

(8) All testimony of the parties and witnesses will be given under oath or affirmation.

(9) Any party to an impartial hearing will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted.

(10) The ALJ will direct the order of testimony and rule on the admissibility of evidence.

(11) Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence including hearsay, may be accepted and will be given its proper weight.

(12) Official records of the Department, including reports submitted in connection with any program administered by the Department or other State agency may be included in the record.

(13) The ALJ may request the presentation of and may take such additional evidence as the ALJ deems necessary.

(14) The parties, with consent of the ALJ, may stipulate to the facts involved. The ALJ may decide the issues on the basis of such facts or may set the matter for hearing and take such further evidence as deemed necessary to determine the issues.

(15) The ALJ may require portions of the evidence be transcribed as necessary for rendering a decision.

(16) Unless the client requests a continuance, the decision of the ALJ will be issued within 60 days of the date on which the client requests a hearing.

(17) A decision of the ALJ which results in a reversal of the Department decision shall be complied without unnecessary delay and according to standard of provision of services procedures.

R993-100-109. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of the client or the Department.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must show cause for the request.

(d) Normally, a party will not be granted more than one request for a continuance.

(3) The rescheduled hearing must be held within 30 days of the original hearing date.

R993-100-110. Default Order or Dismissal for Failure to Participate.

(1) If a hearing has been scheduled at the request of a client and the client fails to appear at or participate in the hearing, either in person or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, dismiss the request for an impartial hearing.

(2) A default order will be based on the record and best evidence available at the time of the order.

R993-100-111. Setting Aside a Default or Dismissal and/or

Reopening the Hearing After the Hearing Has Been Concluded.

(1) Any party who fails to participate personally or by authorized representative as defined may request that the default order or dismissal be set aside and a hearing or a new hearing be scheduled. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened.

(2) The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the ALJ or presiding officer who issued the default order or dismissal within ten days of the issuance of the default or dismissal. If the request is made after the expiration of the ten-day time limit, the party requesting reopening must show good cause for not making the request within ten days.

(3) The ALJ has the discretion to schedule a hearing to determine if a party requesting that a default order or dismissal be set aside or a reopening satisfied the requirements of this rule or may grant or deny the request on the basis of the record in the case.

(4) If a presiding officer issued the default or dismissal, the officer shall forward the request to the Division of Adjudication. The request will be assigned to an ALJ who will then determine if the party requesting that the default or dismissal be set aside or that the hearing be reopened has satisfied the requirements of this rule.

(5) The ALJ may, on his or her own motion, reschedule, continue or reopen a case if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness. An ALJ may also, on his or her own motion, set aside a default or dismissal on the same grounds.

(6) If a request to set aside the default or dismissal or a request for reopening is not granted, the ALJ will issue a decision denying the request to reopen. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A defaulted party may appeal a denial of a request to set aside a default or dismissal by following the procedure in R993-100-114. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case. If the default or dismissal is set aside on appeal, the Executive Director or designee may rule on the merits or remand the case to an ALJ for a ruling on the merits on an additional hearing if necessary.

R993-100-112. What Constitutes Grounds to Set Aside a Default or Dismissal.

(1) A request to reopen or set aside for failure to participate:

(a) will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;

(b) may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(i) the danger that the party not requesting reopening will be harmed by reopening,

(ii) the length of the delay caused by the party's failure to participate including the length of time to request reopening,

(iii) the reason for the request including whether it was within the reasonable control of the party requesting reopening,

(iv) whether the party requesting reopening acted in good faith, and

(v) whether the party was represented by another at the time of the hearing. Because they are required to know and understand Department rules, attorneys and professional

representatives are held to a higher standard, and

(vi) whether based on the evidence of record and the parties' arguments or statements, setting aside the default and taking additional evidence might affect the outcome of the case.

(2) Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

R993-100-113. Canceling an Appeal and Hearing.

When a client notifies the Division of Adjudication or the ALJ that the client wants to cancel the hearing and not proceed with the appeal, a decision dismissing the appeal will be issued. This decision will have the effect of upholding the Department decision. The client will have ten days in which to reinstate the appeal by filing a written request for reinstatement with the Division of Adjudication.

R993-100-114. Further Appeal from the Decision of the ALJ.

The decision of the ALJ will be final 30 days after issuance unless further appeal is filed. Either party has the option of appealing the decision of the ALJ to either the Executive Director or person designated by the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ. If a request for a hearing is not timely filed under R993-100-104, there are no further appeal rights.

**KEY: administrative procedures, complaint procedures
October 1, 2016
35A-1-303
35A-13-102
35A-1-104**

R993. Workforce Services, Rehabilitation.

R993-200. Order of Selection.

R993-200-201. Definitions.

The following definitions apply to terms used in this rule:

(1) Multiple Services or Multiple Vocational Rehabilitation services means three or more services as listed in 29 CFR 723 and in this rule.

(2) Extended Period of Time means the estimated length of time services are to be provided is six months or more.

R993-200-202. Determining Need for and Order of Selection.

(1) An order of selection will be used in the event the division lacks the resources to provide all eligible individuals with services necessary to obtain, retain, or engage in employment. In that event, the order of selection for services will be provided based on the significance of disability. The order of selection will provide services to eligible individuals with the most significant disability first, followed by eligible individuals with significant disabilities, and finally, eligible individuals with disabilities that are not-significant.

(2) Significance of disability is determined by a qualified vocational rehabilitation counselor (QVRC) at the time the eligibility determination is made. The determination will be based on medical, psychological, and other diagnostic documentation and a clinical assessment by the QVRC. The QVRC may use, but is not bound by, determinations made by other state or federal agencies.

R993-200-203. Individuals with the Most Significant Disability.

(1) Individuals who will require multiple vocational rehabilitation services over an extended period of time and who exhibit functional deficits in two or more of the following areas are considered to have the most significant disabilities:

- (a) mobility;
 - (b) communication;
 - (c) self-care which is defined as the inability to perform normal activities of daily living without assistance;
 - (d) self-direction which is defined as the inability to provide informed consent for life issues without the assistance of a court-appointed legal representative or guardian, or has been declared legally incompetent;
 - (e) inter-personal skills;
 - (f) work tolerance;
 - (g) work skills.
- (2) Functional deficits are further defined in policy.

R993-200-204. Individuals with Significant Disability.

An individual with a significant disability can be classified in any one of the following three categories at any time while he or she is in the vocational rehabilitation process:

- (1) An individual;
- (a) who has a severe physical or mental impairment or disability or combination of disabilities, as provided in policy, that is determined to cause substantial functional limitation, which seriously limits one or more functional capacities listed in Rule R993-200-203 in terms of an employment outcome; and
- (b) whose vocational rehabilitation is expected to require multiple services over an extended period of time.
- (2) A recipient of a Social Security Disability Insurance benefits (SSDI) who requires multiple vocational rehabilitation services over an extended period of time.

(3) A recipient of a Supplemental Security Income (SSI) payment by reason of blindness or disability who requires multiple vocational rehabilitation services over an extended period of time. Individuals who have been determined eligible for SSI/SSDI disability benefits by the Social Security Administration are considered to be at least Significantly

Disabled.

R993-200-205. Individuals with Disabilities.

An individual with a disability means an individual who:

- (1) has a physical or mental impairment which for that individual constitutes or results in a substantial impediment to employment;
- (2) can benefit in terms of an employment outcome from receiving vocational rehabilitation services; and
- (3) requires vocational rehabilitation services to prepare for, enter, engage in or retain gainful employment.

R993-200-206. Restrictions on Establishing Priorities.

The following factors cannot be used as criteria for establishing selection priorities:

- (1) type of disability;
- (2) age, sex, race, color, creed, or national origin;
- (3) vocational expectation;
- (4) income level;
- (5) duration of residency;
- (6) source of referral or cooperative agreements with other agencies/programs; or
- (7) cost of services or availability of comparable services and benefits.

**KEY: disabled persons, rehabilitation
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R993. Workforce Services, Rehabilitation.

R993-300. Certification Requirements for Interpreters for the Hearing Impaired.

R993-300-301. Authority and Purpose.

- (1) This rule is authorized by 35A-13-601 et seq.
- (2) This rule is to establish standards and procedures for the certification of interpreters in the state of Utah.

R993-300-302. Definitions and Acronyms.

- (1) "Certified interpreter" means a person who provides interpreter services and is certified or qualified as required by state or federal law.
- (2) "Department" means the Department of Workforce Services.
- (3) "Director" means the director of USOR.
- (4) "Division" means the division of Services for the Deaf and Hard of Hearing.
- (5) "Interpreter service" means a service that facilitates effective communication:
 - (a) between a hearing person and a person who is hearing impaired or deaf, including:
 - (i) a student to teacher;
 - (ii) a student to staff; or
 - (iii) a student to peer; and
 - (b) through:
 - (i) American Sign Language (ASL) or a language system or code that is modeled after or derived from ASL, in whole or in part; or
 - (ii) cued language.
- (6) "ICB" means the Interpreters Certification Board.
- (7) "Local education agency" or "LEA" means:
 - (a) a school district;
 - (b) a charter school; or
 - (c) the Utah Schools for the Deaf and the Blind.
- (8) "USOR" means the Utah State Office of Rehabilitation.

R993-300-303. Certification Requirements.

- (1) To be eligible for certification as an interpreter, a candidate must:
 - (a) submit a completed, signed application;
 - (b) be of good moral character;
 - (c) have a high school diploma, GED, or equivalent;
 - (d) be 18 years or older;
 - (e) submit the appropriate certification examination application fees; and
 - (f) successfully pass the necessary examinations.
- (2) A person who provides interpreter service to an LEA shall complete a background check and submit to ongoing monitoring, prior to working in an LEA with a student:
 - (a) through the person's employer, whether the employer is an LEA or an agency that contracts with an LEA; and
 - (b) in accordance with the requirements of Title 53A, Chapter 15, Part 15, Background Checks.
- (3) If requested by the division, an LEA shall identify and report all persons, including contractors, who provide interpreter services to a student of the LEA. The LEA must also report, if requested, all students who receive interpreter service and the provider of the service.

R993-300-304. Examination of Candidate for Certification.

The division will test and rate a candidate applying for interpreter certification consistent with the division's policy manual. A candidate must pass both a written knowledge examination and a performance examination. The knowledge examination must be successfully passed before a candidate is eligible to take the performance examination.

R993-300-305. Renewal and Reinstatement.

- (1) A person holding a Professional interpreter certificate

may have that certificate renewed every four years by paying a renewal fee and completing the requisite number of hours of qualified continuing education. A person holding a Novice level interpreter certificate may have that certificate renewed annually for up to three years by paying a renewal fee and completing the requisite number of hours of qualified continuing education. Qualified continuing education is defined as education that is relevant to the profession, enhances the skills of the interpreter and are approved by the director in consultation with the ICB. The requisite number of hours of qualified continuing education is set by the director in consultation with the ICB. The number of hours necessary for renewal is available at all division offices.

(2) A person whose interpreter certificate has been suspended or revoked for unlawful or unprofessional conduct may apply for reinstatement to the director. The director may, after consultation with the ICB, require the applicant for reinstatement to complete the procedure for certification or designate the areas of the application process that need to be completed.

R993-300-306. Temporary Exemptions from Certification.

With approval from the division, an individual may engage in the practice of a certified interpreter without being certified as provided in Section 35A-13-609.

R993-300-307. Unlawful and Unprofessional Conduct.

(1) Unprofessional conduct is conduct by a certified interpreter that:

(a) violates, or aids or abets another in violating, generally accepted professional or ethical standards applicable to the profession of a certified interpreter;

(b) physically, mentally, or sexually abuses or exploits an individual through conduct connected with a certified interpreter's practice; or

(c) violates any provision of the NAD-RID Code of Professional Conduct which is available on National Association of the Deaf (NAD) website and the Registry of Interpreters for the Deaf, Inc. (RID) website.

(2) Unlawful conduct is defined in Section 35A-13-611.

(3) A complaint alleging unlawful or unprofessional conduct by a certified interpreter must be filed with the Department and referred to the director.

(4) The director or a designee will review and investigate each complaint. This includes contacting, or otherwise providing notice to, the interpreter if it appears the interpreter may have engaged in unlawful or unprofessional conduct.

(5) If it is determined the certified interpreter engaged in unlawful or unprofessional conduct, the director will issue a written decision which will include the appropriate discipline and appeal rights.

R993-300-308. Grounds for Denial of Certification and Disciplinary Proceedings.

(1) The director may, with the advice of the ICB:

(a) refuse to issue a certification to an applicant;

(b) refuse to renew a certificate;

(c) revoke, suspend or restrict a certificate;

(d) place a certified interpreter on probation; or

(e) otherwise act on the certificate of a certified interpreter who does not meet the qualification for certification under the Interpreter Services for the Deaf and Hard of Hearing Act or these rules.

(2) The director will issue a decision if any of the actions described in subsection (1) of this section is taken. The decision will be in writing and will:

(a) advise an applicant, translator on conditions under which he or she may obtain certification, reinstatement or renewal of certification if any. This may include completing the

procedure for certification; and

(b) notify the applicant or interpreter of his or her appeal rights.

(3) Within 30 days of the date the decision of the director is issued, the interpreter may appeal the decision by filing a written appeal with the Adjudication and Appeals Division. Hearings will be conducted in accordance with Department rules r993-100-104 through r993-100-114 and the Utah Administrative Procedures Act. Hearings are declared to be informal however the Department reserves the right to record hearings.

(4) Either party has the option of appealing the decision of the ALJ to either the Executive Director or person designated by the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ.

R993-300-309. Different Certificate Levels.

(1) The division issues two types of certificates: Novice and Professional.

(2) Candidates for both types of certificate must pass a written examination and a performance examination.

(3) Candidates must pass the written examination before taking the performance examination.

(4) All components of the Novice performance examination must be passed at the same time to successfully acquire Novice Certification.

(5) Not all components of the Professional performance examination must be passed at the same time. A candidate for a Professional certificate who passes one or more component(s) of the professional performance examination has 12 months to pass all remaining components. If all examination components are not passed within the 12 month period, any passed components are no longer valid and the entire exam, written and performance, must be taken again. A candidate who does not pass any portion of the exam must submit a new application and payment to continue in the examination process.

(6) Examination procedures, including penalties for not attending a schedule performance examination, are set by policy and are available in the manual on the division's website.

(7) The ICB sets the passing scores for all examinations.

KEY: certification, interpreters

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