R23. Administrative Services, Facilities Construction and Management.

R23-1. Procurement Rules with Numbering Related to the Procurement Code.

R23-1-101. Scope of the Rules and Compliance by Using Agencies.

(1) Rule R23-1 applies to procurements by the Division of Facilities Construction and Management. This includes the procurement of construction, architects, engineers, design services and all other professional services and procurements related to design or construction by the Division of Facilities Construction and Management as well as other procurement items within the rule authorization of the Division of Facilities Construction and Management. Using Agencies are required to comply with these rules to extent required by the Utah Code.

(2) The statutory provisions governing the procurement referred to in R23-1-101(1) above are provided in the Utah Procurement Code, Title 63G, Chapter 6a of the Utah Code as well as Title 63A, Chapter 5 of the Utah Code.

R23-1-102. Definitions.

Terms used in this R23-1 are defined in Sections 63G-6a-103 and 104 of the Utah Procurement Code. In addition:

(1) "Actual Costs" means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.

(2) "Adequate Price" Competition means:

(a) when a minimum of two competitive bids, proposals, or quotes are received from responsive bidders or offerors.

(3) "Acquiring Agency" is a conducting procurement unit subject to Section 63F-1-205 acquiring new technology or technology as therein defined.

(4) "Bid Bond" is an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

(5) "Bid Rigging" means agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.

(6) "Bid Security" means the deposit of cash, certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the owner that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.

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

(8) "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

(9) "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.

(10) "Collusion" means when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law.

(11) "Cost Analysis" means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.

(12) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(13) "Cronyism" is an anticompetitive practice that may violate federal and state antitrust and procurement laws. Cronyism in government contracting is a form of favoritism where contracts are awarded on the basis of friendships, associations or political connections instead of fair and open competition.

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

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

(16) "Mandatory Requirement" means a condition set out in the specifications/statement of work that must be met without exception.

(17) "Minor Irregularity" is a variation from the solicitation that does not affect the price of the bid, offer, or contract or does not give a bidder/offeror an advantage or benefit not shared by other bidders/offerors, or does not adversely impact the interests of the procurement unit.

(18) "New Technology" means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.

(19) "Participating Addendum" means an agreement issued in conjunction with a Cooperative Contract that authorizes a public entity to use the Cooperative Contract.

(20) "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.

(21) "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.

(22) "Price Data" means factual information concerning prices for procurement items.

(23) Record" shall have the meaning defined in Section 63G-2-103 of the Government Records Access and Management Act (GRAMA).

(24) "Section and Subsection" refers to the Utah Code.

(25) "Solicitations," in addition to the definition in 63G-6a -103 (48) also includes all documents, whether attached or incorporated by reference to the solicitation.

(26) "Surety bond" (performance bond) means a promise to pay one the oblige (owner) a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the oblige (owner) against losses resulting from the principal's failure to meet the obligation. In the event that the obligations are not met, the oblige (owner), will recover its losses via the bond.

(27) "Technology" means any type of technology defined in Section 63F-1-102(8).

(28) "Using Agency" means any state agency or any political subdivision of the state which utilizes the services procured under this Rule 23-1.

R23-1-103. Division is Issuing and Conducting Procurement Unit.

The Division is both the issuing and conducting procurement unit for procurements under this Rule R23-1.

R23-1-201. Director Appoint to Policy Board, Building

Board Rules Authority.

(1) The Director shall appoint a representative to serve on the Utah State Procurement Policy Board.

(2) In accordance with Section 63G-6a-204(2), the Board rules governing procurement of construction, architect-engineer services, and leases apply to the procurement of construction, architect-engineer services, and leases of real property by the Division.

R23-1-301. Relationship with the Division of Purchasing and General Services.

(1) The Division recognizes the provisions of Part 3 of the Utah Procurement Code regarding the Chief Procurement Officer. The Division may participate as needed or required with trainings provided by the Division of Purchasing and General Services.

(2) The Director's responsibilities are provided in Title 63a, Chapter 5 of the Utah Code.

R23-1-401. Prequalification of Potential Vendors.

General procurement provisions, including prequalification of potential vendors, approved vendor lists, and small purchases shall be conducted in accordance with the requirements set forth in Sections 63G-6a-402 through 408. All definitions in the Utah Procurement Code shall apply to this Rule R23-1-4-4 unless otherwise specified in Rule 23-1. This Rule R23-4 provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R23-1-402. Thresholds for Approved Vendor Lists.

(1) Public entities may establish approved vendor lists in accordance with the requirements of Sections 63G-6a-403 and 63G-6a-404.

(a) Contracts or purchases from an approved vendor list may not exceed the following thresholds:

(i) Construction Projects: $2,500,000 per contract, for direct construction costs, including design and allowable furniture or equipment costs, awarded using an invitation for bids or a request for proposals;

(ii) Professional and General Services, including architectural and engineering services: $100,000; and

(b) Thresholds for other approved vendor lists may be established by the Director.

R23-1-403. Specifications.

(1) Solicitation documents shall include specifications for the procurement item(s).

(2) Specifications shall be drafted with the objective of clearly describing the Division's requirements and encouraging competition.

(a) Specifications shall emphasize the functional or performance criteria necessary to meet the needs of the Division.

(3) Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. The Division may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However the person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.

(a) This Rule R23-1-403(3) does not apply to the following:

(i) a design build construction project;

(ii) provisions in specifications provided by the designer when the source of the specification is identified and it is not designed to be an impermissible sole source (a sole source that does not comply with the Utah Procurement Code and the applicable administrative rules); and

(iii) other procurements determined in writing by the Director.

(b) Violations of this Rule R23-1-403(3) may result in:

(i) the bidder or offeror being declared ineligible for award of the contract;

(ii) the solicitation being canceled;

(iii) termination of an awarded contract; or

(iv) any other action determined to be appropriate by the Director.

(4) Brand Name or Equal Specifications.

(a) Brand name or equal specifications may be used when:

(i) "or equivalent" reference is included in the specification; and,

(ii) as many other brand names as practicable are also included in the specification.

(b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.

(c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the Division shall name at least three manufacturer's specifications.

(5) Brand Name Sole Source Requirements.

(a) If only one brand can meet the requirement, the Division shall conduct the procurement in accordance with 63G-6a-802 and shall solicit from as many providers of the brand as practicable; and.

(b) If there is only one provider that can meet the requirement, the Division shall conduct the procurement in accordance with Section 63G-6a-802.

R23-1-404. Small Purchases (Commodities).

Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-408. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) "Small Purchase" means a procurement conducted by the Division that does not require the use of a standard procurement process.

(2) Small Purchase thresholds for commodities:

(a) The "Individual Procurement" threshold is a maximum amount of $1,000 for a procurement item;

(i) For individual procurement item(s) costing up to $1,000, the Division may select the best source by direct award and without seeking competitive bids or quotes.

(a) The single procurement aggregate threshold is a maximum amount of $5,000 for multiple procurement item(s) purchased from one source at one time; and

(b) The annual cumulative threshold from the same source is a maximum amount of $50,000.

(3) Whenever practicable, the Division shall use a rotation system or other system designed to allow for competition when using the small purchases process for commodities.

R23-1-405. Small Purchases Threshold for Architectural and Engineering Services.

(1) The small purchase threshold for architectural or engineering services is a maximum amount of $100,000.

(2) Architectural or engineering services may be procured up to a maximum of $100,000, by direct negotiation.

(3) The Division shall follow the process described in Section 63G-6a-403 to prequalify potential vendors and Section 63G-6a-404 if the Division develops an approved vendor list, or

Part 15 of the Utah Procurement Code for the selection of architectural and engineering services.

(4) The Division shall include minimum specifications when using the small purchase threshold for architectural and engineering services.

R23-1-406. Small Purchases Threshold for Construction Projects.

(1) The small construction project threshold is a maximum of $2,500,000 for direct construction costs, including design and allowable furniture or equipment costs;

(2) The Division shall follow the process described in the Section 63G-6a-403 to prequalify potential vendors and Section 63G-6a-404 to develop an Approved Vendor List or other applicable selection methods described in the Utah Procurement Code for construction services.

(3) The Division shall include minimum specifications when using the small purchases threshold for construction projects.

(4) The Director may procure small construction projects up to a maximum of $25,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting, and other construction related requirements are met. The awarded contractor must certify that they are capable of meeting the minimum specifications of the project.

(5) The Director may procure small construction projects costing more than $25,000 up to a maximum of $100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.

(6) The Division shall procure construction projects over $100,000 using an invitation to bid, request for proposals, approved vendor list, or other approved source selection method provided in the Utah Procurement Code.

R23-1-407. Quotes for Small Purchases of Commodities from $1,001 to $50,000.

The following applies to commodities:

(1) For procurement item(s) where the cost is greater than $1,000 but up to a maximum of $5,000, the Division shall obtain a minimum of two competitive quotes, which may be by email, phone or verbal, that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(2) For procurement item(s) where the cost is greater than $5,000 up to a maximum of $50,000, the Division shall obtain a minimum of two competitive quotes, that include minimum specifications, which must be communicated to the proposed vendors in writing, and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(3) For procurement item(s) costing over $50,000, the Division shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.

(4) The names of the vendors offering quotations and bids and the date and amount of each quotation or bid shall be recorded and maintained as a governmental record.

R23-1-408. Small Purchases of Services of Professionals, Providers, and Consultants.

(1) The small purchase threshold for professional service providers and consultants is a maximum amount of $100,000.

(2) After reviewing the qualifications, the Director may obtain professional services or consulting services up to a maximum of $100,000 by direct negotiation.

R23-1-501. Request for Information.

In addition to the requirements of Part 5 of the Utah Procurement Code, a Request for Information should indicate the procedure for business confidentiality claims and other protections provided by the Utah Government Records and Access Management Act.

R23-1-601. Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction.

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

R23-1-602. Bidder Submissions.

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

(a) the bidder's bid price;

(b) the bidder's acknowledged receipt of addenda issued by the procurement unit;

(c) the bidder to identify other applicable submissions; and (d) the bidder's signature

(2) Bidders may be required to submit descriptive literature and/or product samples to assist the Director in evaluating whether a procurement item meets the specifications and other requirements set forth in the invitation to bid.

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

(3) The provisions of Rule R23-1-705 shall apply to protected records.

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

R23-1-603. Pre-Bid Conferences and Site Visits.

(1) Except as authorized in writing by the Director, pre-bid conferences and site visits must require mandatory attendance by all bidders.

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

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the Director.

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

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

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

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

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

(g) Listening to or viewing audio or video recordings of a mandatory pre-bid conference or site visit may not be substituted for attendance.

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

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

(b) minutes, if there are any, of the pre-bid conference or site visit;

(c) copies of any documents distributed by the Division to the attendees at the pre-bid conference or site visit; and

(d) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

(3) The Division shall publish as an Addendum to the solicitation, the information in R23-1-603 (2)(a) above.

R23-1-604. Addenda to Invitation for Bids.

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

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

(2) After the due date and time for submitting bids, at the discretion of the Director, addenda to the Invitation for Bids may be limited to bidders that have submitted bids, provided the addenda does not make a substantial change to the Invitation for Bids that, in the opinion of the Director, likely would have impacted the number of bidders responding to the Invitation for Bids.

R23-1-605. Bids and Modifications to a Bid Received After the Due Date and Time.

(1) Bids and modifications to a bid submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as determined in R23-1-605(4).

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

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

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

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

R23-1-606. Errors in Bids.

The following shall apply to the correction or withdrawal of an inadvertently erroneous bid, or the cancelation of an award or contract that is based on an unintentionally erroneous bid. A decision to permit the correction or withdrawal of a bid or the cancellation of any award or a contract under this Rule shall be supported in a written document, signed by the Director.

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

(2) Provided that there is no change in bid pricing or the cost evaluation formula, errors not attributed to a bidder's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the mistake maintains the fair treatment of other bidders.

(a) Examples include:

(i) missing signatures,

(ii) missing acknowledging receipt of an addendum;

(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the Director to correct this mistake;

(iv) typographical errors;

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

(vi) other errors deemed by the Director to be immaterial or inconsequential in nature.

(3) The Director shall approve or deny, in writing, a bidder's request to correct or withdraw a bid.

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

(5) If there is any deficiency or failure to submit a required sublist and/or "bid" bond, the Division may request that the bidder who is not in compliance, submit the required sublist and/or "bid" bond by 5 p.m. of the next business day after notice is provided by the Division. Failure to cure the deficiency or failure to submit any required sublist and/or "bid" bond by 5:00 p.m. of the next business day after notice is provided by the Division shall make the bidder ineligible for consideration of award of the contract.

R23-1-607. Errors Discovered After the Award of Contract.

(1) Errors discovered after the award of a contract may only be corrected if, after consultation with the Director and the attorney general's office, it is determined that the correction of the mistake does not violate the requirements of the Utah Procurement Code or these administrative rules.

(2) Any correction made under this subsection must be supported by a written determination signed by the Director.

R23-1-608. Re-solicitation of a Bid.

(1) Re-solicitation of a bid may occur only if the Director determines that:

(a) A material change in the scope of work or specifications has occurred;

(b) procedures outlined in the Utah Procurement Code were not followed;

(c) additional public notice is desired;

(d) there was a lack of adequate competition; or

(e) other reasons exist that are in the best interests of the procurement unit.

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

R23-1-609. Only One Bid Received.

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

(a) a new invitation for bids solicited;

(b) the procurement canceled; or

(c) the procurement may be conducted as a sole source under Section 63G-6a-802.

R23-1-610. Multiple or Alternate Bids.

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

(2) If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the Director will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

R23-1-611. Methods to Resolve Tie Bids.

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

(2) If a Utah resident bidder is not identified, an acceptable method when there are two tie bids shall be for the Director to toss a coin in the presence of a minimum of three witnesses with the firm first in alphabetical order being "heads."

(3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the Director.

R23-1-612. Publication of Award.

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

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

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

R23-1-613. Multiple Stage Bidding Process.

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

(1) The Director may hold a pre-bid conference as described in Rule R33-6-103 to discuss the multiple stage bidding process or for any other permissible purpose.

R23-1-614. Technology Acquisitions.

(1) The Division in an Invitation for Bids may state that at any time during the term of a contract, that the Division may undertake a review in consultation with the Utah Technology Advisory Board and the Department of Technology Services to determine whether a new technology exists that is in the best interest of the acquiring agency, taking into consideration cost, life-cycle, references, current customers, and other factors and that the acquiring agency reserves the right to:

(a) negotiate with the contractor for the new technology, provided the new technology is substantially within the original scope of work;

(b) terminate the contract in accordance with the existing contract terms and conditions; or

(c) conduct a new procurement for an additional or supplemental contract as needed to take into account new technology.

(2) Subject to the provisions of Section 63G-6a-802, the trial use or testing of new technology may be permitted for a duration not to exceed the maximum time necessary to evaluate the technology.

R23-1-615. Subcontractor Lists.

The Division may not consider, or award to, any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of Section 63A-5-208 and this Rule. For purposes of this Rule R23-1-615, the definitions of Section 63A-5-208 shall be applicable. Within 24 hours after the bid opening time, not including Saturdays, Sundays and state holidays, the apparent lowest three bidders, as well as other bidders that desire to be considered, shall submit to the Division a list of their first-tier subcontractors that are in excess of the dollar amounts stated in Subsection 63A-5-208(3)(a)(i)(A).

(1) The subcontractor list shall include the following:

(a) the type of work the subcontractor is to perform;

(b) the subcontractor's name;

(c) the subcontractor's bid amount;

(d) the license number of the subcontractor issued by the Utah Division of Occupational and Professional Licensing, if such license is required under Utah law; and

(e) the impact that the selection of any alternate included in the solicitation would have on the information required by this Subsection (14).

(2) The contract documents for a specific project may require that additional information be provided regarding any contractor, subcontractor, or supplier.

(3) If pursuant to Subsection 63A-5-208(4), a bidder intends to perform the work of a subcontractor or obtain, at a later date, a bid from a qualified subcontractor, the bidder shall:

(a) comply with the requirements of Section 63A-5-208 and

(b) clearly list himself/herself on the subcontractor list form.

(4) Errors on the subcontractor list will not disqualify the bidder if the bidder can demonstrate that the error is a result of his reasonable reliance on information that was provided by the subcontractor and was used to meet the requirements of this section, and, provided that this does not result in an adjustment to the bidder's contract amount.

(5) Pursuant to Sections 63A-5-208 and 63G-2-305, information contained in the subcontractor list submitted to the Division shall be classified public except for the amount of subcontractor bids which shall be classified as protected until a contract has been awarded to the bidder at which time the subcontractor bid amounts shall be classified as public. During the time that the subcontractor bids are classified protected, they may only be made available to procurement and other officials involved with the review and approval of bids.

(6) Change of Listed Subcontractors. Subsequent to twenty-four hours after the bid opening, the contractor may change his listed subcontractors only after receiving written permission from the Director based on complying with all of the following:

(a) The contractor has established in writing that the change is in the best interest of the State and that the contractor establishes an appropriate reason for the change, which may include, but is not limited to, the following reasons:

(i) the original subcontractor has failed to perform, or is not qualified or capable of performing

(ii) the subcontractor has requested in writing to be released

(b) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors;

(c) Any requirement set forth by the Director to ensure that the process used to select a new subcontractor does not give rise to bid shopping;

(d) Any increase in the cost of the subject subcontractor work shall be borne by the contractor; and

(e) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.

R23-1-616. Bids Over Budget.

(1) In the event all bids for a construction project exceed

available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed those funds by more than 5%, the Director may, where time or economic considerations preclude resolicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(2) As an alternative to the procedure authorized in Subsection (1), when all bids for a construction project exceed available funds as certified by the Director, and the Director finds that due to time or economic considerations the re-solicitation of a reduced scope of work would not be in the interest of the state, the Director may negotiate an adjustment in the bid price using one of the following methods:

(a) reducing the scope of work in specific subcontract areas and supervising the re-bid of those subcontracts by the low responsive and responsible bidder;

(b) negotiating with the low responsive and responsible bidder for a reduction in scope and cost with the value of those reductions validated in accordance with Section R23-1-50; or

(c) revising the contract documents and soliciting new bids only from bidders who submitted a responsive bid on the original solicitation. This re-solicitation may have a shorter bid response time than otherwise required.

(3) The use of one of the alternative procedures provided for in this subsection (2) must provide for the fair and equitable treatment of bidders.

(4) The Director's written determination, including a brief explanation of the basis for the decision shall be included in the contact file.

(5) This Rule does not restrict in any way, the right of the Director to use any emergency or sole source procurement provisions, or any other applicable provisions of State law or rule which may be used to award the construction project.

R23-1-701. Conducting the Request for Proposals Standard Procurement Process.

Request for Proposals shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-711, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R23-1-702. Content of the Request for Proposals.

(1) In addition to the requirements set forth under Section 63G-6a-703, the request for proposals solicitation shall include:

(a) a description of the format that offerors are to use when submitting a proposal including any required forms; and

(b) instructions for submitting price.

(2) The Division is responsible for all content contained in the request for proposals solicitation documents, including:

(a) reviewing all schedules, dates, and timeframes;

(b) approving content of attachments;

(c) providing the Division with redacted documents, as applicable;

(d) assuring that information contained in the solicitation documents is public information; and

(e) understanding the scope of work, all evaluation criteria, requirements, factors, and formulas to be used in determining the scoring of proposals; and

(f) the requirements of Section 63G-6a-402(6).

R23-1-703. Multiple Stage RFP Process.

(1) In addition to the requirements set forth under Section 63G-6a-710, the multiple stage request for proposals solicitation shall include:

(a) a description of the stages and the criteria and scoring that will be used to evaluate proposals at each stage; and

(b) the methodology used to determine which proposals shall be disqualified from additional stages.

R23-1-704. (Reserved for Expansion).

Reserved.

R23-1-705. Protected Records.

(1) The following are protected records and may be redacted by the vendor subject to the procedures described below in accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code.

(a) Trade Secrets, as defined in Section 13-24-2 of the Utah Code.

(b) Commercial information or non-individual financial information subject to the provisions of Section 63G-2-305(2).

(c) Other Protected Records under GRAMA.

(2) Process For Requesting Non-Disclosure. Any person requesting that a record be protected shall include with the proposal or submitted document:

(a) a written indication of which provisions of the proposal or submitted document are claimed to be considered for business confidentiality or protected (including trade secrets or other reasons for non-disclosure under GRAMA); and

(b) a concise statement of the reasons supporting each claimed provision of business confidentiality or protected.

R23-1-706. Notification.

(1) A person who complies with Rule R23-1-705 shall be notified by the procurement unit prior to the public release of any information for which a claim of confidentiality has been asserted.

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under Rule R23-1-705 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This Rule R23-1-706 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

(3) Any allowed disclosure of public records submitted in the request for proposal process will be made only after the selection of the successful offeror(s) has been made public in compliance with Section 63G-6a-709.5.

R23-1-707. Process for Submitting Proposals with Protected Business Confidential Information.

(1) If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals:

(a) One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and

(b) One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."

(i) Pricing may not be classified as business confidential and will be considered public information.

(ii) An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the offeror removes the designation.

R23-1-708. Pre-Proposal Conferences and Site Visits.

(1) Except as authorized in writing by the Director, pre-proposal conferences and site visits must require mandatory attendance by all offerors.

(a) A pre-proposal conference may be attended via the following:

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the Director.

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

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

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

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

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

(g) Listening to or viewing audio or video recordings of a mandatory pre-proposal conference or site visit may not be substituted for attendance.

(2) If a pre-proposal conference or site visit is held, the Division unit shall maintain:

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

(b) minutes, if there are any, of the pre-proposal conference or site visit;

(c) copies of any documents distributed by the Division to the attendees at the pre-proposal conference or site visit:

(d) any verbal modification made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

(3) The Division shall publish as an addendum to the solicitation, the information in R23-1-708(2)(a) above.

R23-1-709. Addenda to Request for Proposals.

(1) Addenda to the Request for Proposals may be made for the purpose of:

(a) making changes to:

(i) the scope of work;

(ii) the schedule;

(iii) the qualification requirements;

(iv) the criteria;

(v) the weighting; or

(vi) other requirements of the Request for Proposal.

(b) Addenda shall be published within a reasonable time prior to the deadline that proposals are due, to allow prospective offerors to consider the addenda in preparing proposals. Publication at least 5 calendar days prior to the deadline that proposals are due shall be deemed a reasonable time. Minor addenda and urgent circumstances may require a shorter period of time.

(2) After the due date and time for submitting a response to Request for Proposals, at the discretion of the Director, addenda to the Request for Proposals may be limited to offerors that have submitted proposals, provided the addenda does not make a substantial change to the Request for Proposals that, in the opinion of the Director likely would have impacted the number of Offerors responding to the original publication of the Request for Proposals.

R23-1-710. Modification or Withdrawal of Proposal Prior to Deadline.

A proposals may be modified or withdrawn prior to the established due date and time for responding.

R23-1-711. Proposals and Modifications, Delivery and Time Requirements.

(1) Except as provided in R23-1-711(5) below, proposals and modifications to a proposal submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason.

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

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

(4) All proposals or modifications to proposals received by physical delivery will be date and time stamped by the Division.

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

R23-1-712. Errors in Proposals.

The following shall apply to the correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the Director.

(1) Mistakes attributed to an offeror's error in judgment may not be corrected.

(2) Unintentional errors not attributed to an offeror's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the error maintains the fair treatment of other offerors.

(a) Examples include:

(i) missing signatures,

(ii) missing acknowledgement of an addendum;

(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the Director to correct this mistake;

(iv) typographical errors;

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

(vi) other errors deemed by the Director to be immaterial or inconsequential in nature.

(3) Unintentional errors discovered after the award of a contract may only be corrected if, after consultation with the Director and the Attorney General's Office, it is determined that the correction of the error does not violate the requirements of the Utah Procurement Code or these administrative rules.

R23-1-713. Evaluation of Proposals.

The evaluation of proposals shall be conducted in accordance with Part 7 of the Utah Procurement Code.

R23-1-714. Correction or Withdrawal of Proposal, Sublist and Bond errors.

(1) In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the Director may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with Section 63G-6a-706.

(2) Offerors may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsible, not responsive, or that does not meet the mandatory minimum requirements stated in the request for proposals in accordance with Section 63G-6a-704.

(3) If there is any deficiency or failure to submit a required sublist and/or "bid" bond, the Division may request that the offeror who is not in compliance, submit the required sublist and/or "bid" bond by 5 p.m. of the next business day after notice is provided by the Division. Failure to cure the deficiency or failure to submit any required sublist and/or "bid" bond by 5:00 p.m. of the next business day after notice is provided by the Division shall make the offeror ineligible for consideration of award of the contract.

R23-1-715. Interviews and Presentations.

(1) Interviews and presentations may be held as outlined in the RFP.

(2) Offerors invited to interviews or presentations shall be limited to those offerors meeting minimum requirements specified in the RFP.

(3) Representations made by the offeror during interviews or presentations shall become an addendum to the offeror's proposal and shall be documented. Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal.

(4) The Director shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.

R23-1-716. Best and Final Offers.

Best and Final Offers shall be conducted in accordance with Section 63G-6a-707.5. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) The best and final offers (BAFO) process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals.

(a) An evaluation committee may request best and final offers when:

(i) no single proposal addresses all the specifications;

(ii) all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;

(iii) additional information is needed in order for the evaluation committee to make a decision;

(iv) the differences between proposals in one or more categories are too slight to distinguish;

(v) all cost proposals are too high or over the budget;

(vi) multiple contract awards are necessary to achieve regional or statewide coverage for a procurement item under an RFP and there are insufficient cost proposals within the budget to award the number of contracts needed to provide regional or statewide coverage.

(2) Only offerors meeting the minimum qualifications or scores described in the RFP are eligible to respond to best and final offers.

(3) Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the RFP described in the request for best and final offers.

(a) Offerors may not use the best and final offers process to correct deficiencies in their proposals not addressed in the request for best and final offers issued by the Division.

(4) When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemize cost proposals clearly indicating the tasks or scope reductions that can be accomplished to bring costs within the available budget.

(a) The cost information of one offeror may not be disclosed to competing offerors during the best and final offers process and further, such cost information shall not be shared with other offerors until the contract is awarded.

(b) The Division shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.

(5) The best and final offers process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the RFP process.

(6) A procurement unit may not use the best and final offers process to allow offerors a second opportunity to respond to the entire request for proposals.

(7) If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.

(8) A request for best and final offers issued by the Division shall:

(a) comply with all public notice requirements provided in Section 63G-6a-406;

(b) include a deadline for submission that allows offerors a reasonable opportunity for the preparation and submission of their responses;

(c) indicate how proposal modifications in response to a request for best and final offers will be evaluated;

(9) If an offeror does not submit a best and final offer, its immediately previous proposal will be considered its best and final offer;

(10) Unsolicited best and final offers will not be accepted from offerors.

R23-1-717. Cost-benefit Analysis Exception: CM/GC.

(1) A cost-benefit analysis is not required if the contract is awarded solely on the qualifications of the construction manager/general contractor and the management fee described in Section 63G-6a-708 provided:

(a) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide, at a minimum:

(i) a management plan;

(ii) references;

(iii) statements of qualifications; and

(iv) a management fee only if requested by the Division. The management fee may not be requested by the Division if the management fee is not part of the criteria for the evaluation committee. The Division may use a fee table for this management fee.

(b) the management fee contains only the following:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(c) the evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.

(d) the contract awarded must be in the best interest of the procurement unit.

R23-1-718. Only One Proposal Received.

(1) If only one proposal is received in response to a

request for proposals, the evaluation committee may:

(a) conduct a review to determine if:

(i) the proposal meets the minimum requirements;

(ii) pricing and terms are reasonable; and

(iii) the proposal is in the best interest of the procurement unit.

(b) if the evaluation committee determines the proposal meets the minimum requirements, pricing and terms are reasonable, and the proposal is in the best interest of the procurement unit, the procurement unit may make an award.

(c) If an award is not made, the procurement unit may either cancel the procurement or re-solicit for the purpose of obtaining additional proposals.

R23-1-719. Publicizing Awards.

(1) In addition to the requirements of Section 63G-6a-709.5, the following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under Rule R23-1-705;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Rule R23-1-705;

(c) the rankings of the proposals;

(d) the names of the members of any selection committee (reviewing authority);

(e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings.

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under Rule R23-1-705.

(2) After due consideration and public input, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:

(a) the names of individual scorers/evaluators in relation to their individual scores or rankings;

(b) any individual scorer's/evaluator's notes, drafts, and working documents;

(c) non-public financial statements; and

(d) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement; it is subject to public disclosure.

R23-1-801. Sole Source - Award of Contract Without Competition.

(1) Sole source procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-802, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and should be used in conjunction with the Procurement Code.

(2) A sole source procurement may be conducted if:

(a) there is only one source for the procurement item;

(b) the award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or

(c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.

(3) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a sole source procurement.

(4) Requests for a procurement to be conducted as a sole source shall be submitted in writing to the Director for approval.

(5) The sole source request shall be submitted to the Director and shall include:

(a) a description of the procurement item;

(b) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;

(c) the duration of the proposed sole source contract;

(d) an authorized signature of the requester;

(e) unless the sole source procurement is conducted under Rule R23-1-801(2)(b) or (c), research completed by the requester documenting that there are no other competing sources for the procurement item;

(f) any other information requested by the Director; and

(6) a sole source request form containing all of the requirements of Rule R23-1-801(5) may be available on the division's website and/or may be described in specifications or other contract documents.

(7) Except as provided in (b), sole source procurements over $50,000 shall be published in accordance with Section 63G-6a-406.

(a) Sole source procurements under $50,000 are not required to be published but may be published at the discretion of the Director.

(b) The requirement for publication of notice for a sole source procurement is waived:

(i) for public utility services;

(ii) if the award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;

(iii) when the circumstances of the request are clear that there can only be one source; or

(iv) for other circumstances as determined in writing by the Director.

(8) A person may contest a sole source procurement prior to the closing of the public notice period set forth in Section 63G-6a-406, when public notice is required under this Rule R23-1-801 by submitting the following information in writing to the Director:

(a) the name of the contesting person; and

(b) a detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item.

(9) Upon receipt of information contesting a sole source procurement, the Director shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

R23-1-802. Trial Use or Testing of a Procurement Item, Including New Technology.

The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802, Utah Procurement Code.

R23-1-803. Alternative Procurement Methods.

(1) The Director may utilize alternative procurement methods to acquire procurement items such as those listed below when it is determined in writing by the Director, to be more practicable or advantageous to the procurement unit:

(a) used vehicles;

(b) livestock;

(c) hotel conference facilities and services;

(d) speaker honorariums;

(e) hosting out-of-state and international dignitaries;

(f) international promotion of the state; and

(g) any other procurement item for which a standard procurement method is not reasonably practicable.

(2) When making this determination, the Director may take into consideration whether:

(a) the potential cost of preparing, soliciting and evaluating bids or proposals is expected to exceed the benefits normally associated with such solicitations;

(b) the procurement item cannot be acquired through a standard procurement process; and

(c) the price of the procurement item is fair and reasonable.

(3) In the event that it is so determined, the Director may elect to utilize an alternative procurement method which may include any or all of the following:

(a) informal price quotations;

(b) direct negotiations; and

(c) direct award.

R23-1-804. Emergency Procurement.

(1) Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803, and this rule.

(2) An emergency procurement is a procurement procedure where the procurement unit is authorized to obtain a procurement item without using a standard competitive procurement process.

(3) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

(4) While a standard procurement process is not required under an emergency procurement, when practicable, the Division should seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services.

(5) The Division shall make a written determination documenting the basis for the emergency and the selection of the procurement item. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

R23-1-805. Declaration of "Official State of Emergency".

Upon a declaration of an "Official State of Emergency" by the authorized state official, the Director shall implement the division's Continuity of Operations Plan, or COOP. When activated, the division shall follow the procedures outlined in the plan and take appropriate actions as directed by the procurement unit responsible for authorizing emergency acquisitions of procurement items.

R23-1-901. General Provisions.

(1) An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled prior to the deadline for receipt of bids, proposals, or other submissions, when it is in the best interests of the procurement unit as determined by the Division. In the event a solicitation is cancelled, the reasons for cancellation shall be made part of the procurement file and shall be available for public inspection and the Division shall:

(a) re-solicit new bids or proposals using the same or revised specifications; or,

(b) withdraw the requisition for the procurement item(s).

R23-1-902. Re-solicitation.

(1) In the event there is no initial response to an initial solicitation, the Director may:

(a) contact the known supplier community to determine why there were no responses to the solicitation;

(b) research the potential vendor community; and,

(c) based upon the information in (a) and (b) require the Division to modify the solicitation documents.

(2) If the Division has modified the solicitation documents and after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the Director, shall:

(a) require the Division to further modify the procurement documents; or,

(b) cancel the requisition for the procurement item(s).

R23-1-903. Cancellation Before Award.

(1) Solicitations may be cancelled before award but after opening all bids or offers when the Director determines in writing that:

(a) inadequate or ambiguous specifications were cited in the solicitation;

(b) the specifications in the solicitation have been or must be revised;

(c) the procurement item(s) being solicited are no longer required;

(d) the solicitation did not provide for consideration of all factors of cost to the procurement unit, such as cost of transportation, warranties, service and maintenance;

(e) bids or offers received indicate that the needs of the procurement unit can be satisfied by a less expensive procurement item differing from that in the solicitation;

(f) except as provided in Section 63G-6a-607, all otherwise acceptable bids or offers received are at unreasonable prices, or only one bid or offer is received and the Director cannot determine the reasonableness of the bid price or cost proposal;

(g) the responses to the solicitation were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or,

(h) no responsive bid or offer has been received from a responsible bidder or offer.

R23-1-904. Alternative to Cancellation.

In the event administrative difficulties are encountered before award but after the deadline for submissions that may delay award beyond the bidders' or offerors' acceptance periods, the bidders or offerors should be requested, before expiration of their bids or offers, to extend in writing the acceptance period (with consent of sureties, if any) in order to avoid the need for cancellation.

R23-1-905. Continuation of Need.

If the solicitation has been cancelled for the reasons specified in Rule R23-1-903 (1)(f), (g) or (h) and the Director has made the written determination in Rule R23-1-903(1) and the Division has an existing contract, the Division may permit an extension of the existing contract under Section 63G-6a-802(7).

R23-1-906. Rejections and Suspension/Debarment.

(1) The Division may reject any or all bids, offers or other submissions, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the procurement unit. In the event of a rejection of any or all bids, offers or other submissions, in whole or in part, the reasons for rejection shall be made part of the procurement file and shall be available for public inspection.

(2) Bids, offers, or other submissions, received from any person that is suspended, debarred, or otherwise ineligible as of the due date for receipt of bids, proposals, or other submissions shall be rejected.

R23-1-907. Rejection for Nonresponsibility or Nonresponsiveness.

(1) Subject to Section 63G-6a-903, the Director shall reject a bid or offer from a bidder or offeror determined to be nonresponsible. A responsible bidder or offeror is defined in Section 63G-6a-103(42).

(2) In accordance with Section 63G-6a-604(3) the Director may not accept a bid that is not responsive. Responsiveness is defined in Section 63G-6a-103(43).

(3) If there is any deficiency or failure to submit a required sublist and/or "bid" bond, the Division may request that the bidder/offeror who is not in compliance, submit the required sublist and/or "bid" bond by 5 p.m. of the next business day after notice is provided by the Division. Failure to cure the deficiency or failure to submit any required sublist and/or "bid" bond by 5:00 p.m. of the next business day after notice is provided by the Division, shall make the bidder/offeror nonresponsive and therefore ineligible for consideration of award of the contract.

(4) The originals of all rejected bids, offers, or other submissions, and all written findings with respect to such rejections, shall be made part of the procurement file and available for public inspection.

R23-1-908. Debarment or Suspension From Consideration for Award of Contracts -- Process -- Causes for Debarment -- Appeal.

The procedures for a debarment or suspension from consideration for award of contracts, including appellate rights, are provided in Section 63G-6a-904. Upon any suspension or debarment, the person that is suspended or debarred shall be considered nonresponsible and ineligible for the award of contracts by the Division in accordance with the determination of suspension or debarment.

R23-1-1001. Providers of State Products.

(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1002 for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah, Rule R23-1-10 outlines the process for award of a contract when there is more than one equally low preferred bidder. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) In the event there is more than one equally low preferred bidder, the Director shall consider the preferred bidders as tie bidders and shall follow the process specified in Section 63G-6a-608 and Rule R23-1-10.

R23-1-1002. Preference for Resident Contractors.

(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1003 for resident Utah contractors, this rule outlines the process for award of a contract when there is more than one equally low preferred resident contractor.

(2) In the event there is more than one equally low preferred resident contractor, the Director shall consider the preferred resident contractors as tie bidders and shall follow the process specified in Section 63G-6a-608 and this R23-1-10.

R23-1-1003. Exception for Federally Funded Contracts.

This Rule R23-1-10 does not apply to the extent it might jeopardize the receipt of federal funds, conflicts with federal requirements relating to a procurement that involves the expenditure of federal assistance, federal contract funds, or federal financial participation funds.

R23-1-1101. Definitions.

(1) Whenever used in this Rule, the terms "bid", "bidder" and "bid security" apply to all procurements, including non-construction procurements, when the procurement documents, regardless of the procurement type, require securities and/or bonds.

(2) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R23-1-1102. Bid Security Requirements for Projects.

(1) Application. The requirements for bid security and bonds under this Rule R23-1-11 shall apply as follows:(a) For the Division, the award of construction contracts where the face amount of the contract is $100,000 or more.

(b) For other state agencies that are required to use the same or similar documents as the Division for their construction contracts, the award of construction contracts where the face amount of the contract is $50,000 or more, unless the Division Director, in writing, approves a $100,000 or more requirement similarly to the Division, based on:

(i) The Division Director's finding that the agency has a selection process for such contracts that are under $100,000, that ensures a responsible, financially solvent contractor is selected; and

(ii) that the agency has the financial capability to absorb the potential responsibility that can occur due to the lack of the bid security and bonding requirements for the contract under $100,000.

(c) At any time the Division or any other state agency can require acceptable bid security as well as performance and payment bonds on contracts that are for amounts below the standard requirements set forth above in this Rule.

(2) Acceptable Bid Security. The term "bid" as used in this Rule R23-1-1102 shall also be deemed to apply to "offer."

(a) Invitations for Bids and Requests For Proposals shall require the submission of acceptable bid security in an amount equal to at least five percent of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with acceptable bid security, the bid shall be deemed nonresponsive, unless this failure is found to be nonsubstantial as hereinafter provided.

(b) If acceptable bid security is not furnished in accordance with Rule R23-1-907(3), the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Director to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:

(i) the bid security is submitted on a form other than the Division's required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Subsection (5);

(ii) the contractor provides acceptable bid security by 5 p.m. of the next business day after notice is provided by the Division of the defective bid security; or

(iii) only one bid is received.

(3) Payment and Performance Bonds. Except as provided in this Rule R23-1-1102(1) above, payment and performance bonds in the amount of 100% of the contract price are required for all contracts in excess of $50,000. These bonds shall cover the procuring agencies and be delivered by the contractor to the Division at the same time the contract is executed. If a contractor fails to deliver the required bonds, the contractor's bid shall be found nonresponsive and its bid security shall be forfeited.

(4) Forms of Bonds. Bid Bonds, Payment Bonds and Performance Bonds must be from sureties meeting the requirements of Rule R23-1-1102(5) and must be on the exact bond forms most recently adopted by the Board and on file with the Division.

(5) Surety firm requirements. All surety firms must be

authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A co-surety may be utilized to satisfy this requirement.

(6) Waiver. The Director may waive any bonding requirements set forth in this Rule if the Director finds circumstances in which the Director considers any or all of the bonds to be unnecessary to protect the State. Any such waiver shall be stated in writing, explain the circumstances why the bond(s) is not necessary to protect the procurement unit, and the waiver shall be made part of the project file.

(7) The Director may require an acceptable bid security on projects that are for amounts less than the standard amount set forth in this Rule R23-1-1102.

R23-1-1201. Required Contract Clauses.

(1) The Division shall comply with Sections 63G-6a-1202 considering clauses for contracts. The Division will establish standard contract clauses to assist the Division and to help contractors and potential contractors to understand applicable requirements. These standard contract clauses may be modified as needed to meet the requirements of the particular project.

(2) The Division shall also comply with the requirements of Section 63G-6a-402(6) by requiring that for each contract and request for proposals, the inclusion of a clause that requires the Division, for the duration of the contract, to make available contact information of the winning contractor to the Department of Workforce Services in accordance with Section 35A-2-203. This requirement does not preclude a contractor from advertising job openings in other forums throughout the state.

(3) There shall be compliance with the federal contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub. L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

(4) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R23-1-1202. Establishment of Terms and Conditions.

The Division may use the Standard Terms and Conditions adopted by the Division of Purchasing and General Services for a particular procurement with modifications.

R23-1-1203. Contracts and Change Orders -- Contract Types.

The Division may use contract types to the extent authorized under Section 63G-6a-1205.

R23-1-1204. Prepayments.

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

R23-1-1205. Leases of Personal Property.

Leases of personal property are subject to the following:

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

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

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

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

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

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

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

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

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

R23-1-1206. Multi-Year Contracts.

The Division may issue multi-year contracts in accordance with Section 63G-6a-1204. Section 63G-6a-1204 does not apply to a contract for the design or construction of a facility, a road, a public transit project, or a contract for the financing of equipment.

R23-1-1207. Installment Payments.

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

R23-1-1208. Change Orders.

The Division shall comply with Section 63G-6a-1207.

R23-1-1209. Requirements for Cost or Pricing Data.

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

(2) Cost or pricing data exceptions:

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

(b) if a contractor submits a price adjustment higher than established market indices, catalog prices or other benchmarks established in the contract, the Director may request additional cost or pricing data; or

(c) the Director may waive the requirement for cost or pricing data provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

R23-1-1210. Defective Cost or Pricing Data.

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

(2) If a settlement cannot be negotiated, either party may seek relief as provided by applicable laws and rules.

R23-1-1211. Cost Analysis.

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

(a) specific elements of costs;

(b) total cost of ownership and life-cycle cost;

(c) supplemental cost schedules;

(d) market basket cost of similar items;

(e) the necessity for certain costs;

(f) the reasonableness of allowances for contingencies;

(g) the basis used for allocation of indirect costs; and,

(h) the reasonableness of the total cost or price.

R23-1-1212. Audit.

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

prospective contractor, subcontractor, or prospective subcontractor.

R23-1-1213. Retention of Books and Records.

Contractors shall maintain all records related to the contract. These records shall be maintained by the contractor for at least six years after the final payment, unless a longer period is required by law. All accounting for contracts and contract price adjustments, including allowable incurred costs, shall be conducted in accordance with generally accepted accounting principles for government.

R23-1-1214. Inspections.

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

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

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

R23-1-1215. Access to Contractor's Manufacturing/Production Facilities.

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

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

(b) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Utah Code or Administrative Rule; and

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

R23-1-1216. Inspection of Supplies and Services.

(1) Contracts may provide that the Director or Division may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether the procurement items conform to solicitation and contract requirements.

R23-1-1217. Conduct of Inspections.

(1) No inspector may change any provision of the specifications or the contract without written authorization of the Director. The presence or absence of an inspector or an inspection, shall not relieve the contractor or subcontractor from any requirements of the contract.

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

R23-1-1301. Purpose.

The purpose of this rule is to comply with the provisions of Sections 63G-6a-1302 and 1303 of the Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R23-1-1302. Construction Management Rule.

As required by Section 63G-6a-1302, this rule contains provisions applicable to:

(1) selecting the appropriate method of management for construction contracts;

(2) documenting the selection of a particular method of construction contract management; and

(3) the selection of a construction manager/general contractor.

R23-1-1303. Application.

The provisions of Rules R23-1-1302 through R23-1-1306 shall apply to all procurements of construction.

R23-1-1304. Methods of Construction Contract Management.

(1) This Rule contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) It is intended that the Director have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procurement unit. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.

(3) Before choosing the construction contracting method to use, a careful assessment must be made by the Director of requirements the project shall consider, at a minimum, the following factors:

(a) when the project must be ready to be occupied;

(b) the type of project, for example, housing, offices, labs, heavy or specialized construction;

(c) the extent to which the requirements of the procurement unit and the way in which they are to be met are known;

(d) the location of the project;

(e) the size, scope, complexity, and economics of the project;

(f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing/nonlapsing status and legislative intent language;

(g) the availability, qualification, and experience of the procurement unit's personnel to be assigned to the project and how much time the procurement unit's personnel can devote to the project;

(h) the availability, qualifications and experience of outside consultants and contractors to complete the project under the various methods being considered;

(i) the results achieved on similar projects in the past and the methods used; and

(j) the comparative advantages and disadvantages of the construction contracting method and how they might be adapted or combined to fulfill the needs of the procuring agencies.

(5) The following descriptions are provided for the more common construction contracting management methods which may be used by the procurement unit. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects. In each project, these descriptions may be adapted to fit the circumstances of that project.

(a) Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the procurement unit to timely complete an entire construction project in accordance with drawings and specifications provided by the procurement unit. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the procurement unit. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(b) Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with a procurement unit to meet the procurement unit's

requirements as described in a set of performance specifications and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(c) Construction Manager/General Contractor (Construction Manager at Risk). The Division may contract with the construction manager early in a project to assist in the development of a cost effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, that the project will be completed on time and will not exceed a specified maximum price.

R23-1-1305. Selection of Construction Method Documentation.

The Director shall include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contract management for each project.

R23-1-1306. Special Provisions Regarding Construction Manager/General Contractor.

(1) In the selection of a construction manager/general contractor, a standard procurement process as defined in Section 63G-6a-103 may be used or an exception allowed under Part 8 of the Utah Procurement Code.

(2) When the CM/GC enters into any subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the CM/GC shall procure the subcontractor(s) by using a standard procurement process as defined in Section 63G-6a-103 of the Utah Procurement Code or an exception to the requirement to use a standard procurement process, described in Part 8 of the Utah Procurement Code.

R23-1-1307. Special Provisions Regarding Design-Build.

(1) The Board authorizes the Division for State building construction projects to use a design-build provider as one method of construction contracting management.

(2) A design-build contract may include a provision for obtaining the site for the construction project.

(3) A design-build contract or a construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing.

R23-1-1308. Drug and Alcohol Testing Required for State Contracts: Definitions.

The rules applicable to the Division for drug and alcohol testing are in Rule 23-7 of the Utah Administrative Code.

R23-1-1401. Procurement of Design-Build Transportation Project Contracts.

The Board recognizes that the Utah Department of Transportation is the rulemaking authority for rules under Section 63G-6a-1402(3)(a)(ii) governing the procurement of design-build transportation projects.

R23-1-1501. Architect-Engineer Procurement Process, General Process.

(1) Application. The provisions of Part 15 of the Utah Procurement Code apply to every procurement of services within the scope of the practice of architecture as defined by Section 58-3a-102, or professional engineering as defined in Section 58-22-102, except as authorized by Rule R33-4-105. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) Architect-Engineer Evaluation Committee. The Director shall designate members of the Architect-Engineer Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Section 63G-6a-707.

(3) Request for Statement of Qualifications. The Division shall issue a public notice for a request for statement of qualifications to rank architects or engineers. The Division shall:

(a) state in the request for statement of qualifications:

(i) the type of procurement item to which the request for statement of qualifications relates;

(ii) the scope of work to be performed;

(iii) the instructions and the deadline for providing information in response to the request for statement of qualifications;

(iv) criteria used to evaluate statements of qualifications including:

(A) basic information about the person or firm;

(B) experience and work history;

(C) management and staff;

(D) qualifications and certification;

(E) licenses and certifications;

(F) applicable performance ratings;

(G) financial statements; and

(H) other pertinent information.

(b) Key personal identified in the statement of qualifications may not be changed without the advance written approval of the procurement unit.

(4) Not include Cost in Response. Architects and engineers shall not include cost in a response to a request for statement of qualifications.

(5) Evaluation of Statement of Qualifications. The evaluation committee shall evaluate statements of qualifications in accordance with Section 63G-6a-707 to rank (score) architects or engineers without considering cost.

(6) Negotiation and Award of Contract. The Director shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable based on the Division's rate table or as may be reasonably adjusted by the Director for the particular scope of work, location or other aspects of the services.

(7) Failure to Negotiate Contract With the Highest Ranked Firm.

(a) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the highest ranked firm, the Director shall advise the firm in writing of the termination of negotiations.

(b) Upon failure to negotiate a contract with the highest ranked firm, the Director shall proceed in accordance with Section 63G-6a-1505 of the Utah Procurement Code.

(8) Notice of Award.

(a) The Director shall award a contract to the highest ranked firm with which the fee negotiation was successful.

(b) Notice of the award shall be made available to the public.

(8) Written Justification Statements. The Division shall issue a statement justifying the ranking of the firm with which fee negotiation was successful.

R23-1-1502. Disclosure of Submittals, Performance Evaluations, and References.

(1) Except as provided in this rule, submittals shall be open to public inspection after notice of the selection results.

(2) The classification of records as protected and the treatment of such records shall be as provided in Rule R23-1-

705.

(3) The Board finds that it is necessary to maintain the confidentiality of performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing performance evaluations and reference information are classified as protected records under the provisions of Subsection 63G-2-305(6) and shall be disclosed only to those persons involved with the performance evaluation, the architect or engineer that the information addresses and persons involved with the review and selection of submittals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the architect or engineer that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.

R23-1-1503. Publicizing Selections.

(1) Notice. After the selection of the successful firm, notice of the selection shall be available in the principal office of the Division in Salt Lake City, Utah and may be available on the Internet

(2) Information Disclosed. The following shall be disclosed with the notice of selection

(a) the ranking of the firms

(b) the names of the selection committee members;

(c) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; an

(d) the written justification statement supporting the selection.

(3) Information Classified as Protected. After due consideration and public input, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division and shall be classified as protected records:

(a) the names of individual selection committee scorers in relation to their individual scores or rankings; and

(b) non-public financial statements.

R23-1-1504. Performance Evaluation.

(1) The Division shall evaluate the performance of the architectural or engineering firm and shall provide an opportunity for the using agency to comment on the Division's evaluation.

(2) This evaluation shall become a part of the record of that architectural or engineering firm within the Division. The architectural or engineering firm shall be provided a copy of its evaluation at the end of the project and may enter its response in the file.

(3) Confidentiality of the evaluation information shall be addressed as provided in Subsections R23-1-1502 and R23-1-1503.

R23-1-1601. Conduct.

Controversies and protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through 13G-6a-604. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R23-1-1602. Verification of Legal Authority.

A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association.

R23-1-1603. Intervention in a Protest.

(1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.

(2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule will be considered timely. The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.

(3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.

(4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person's interest in sufficient factual detail to demonstrate that:

(a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

(i) consumer;

(ii) customer;

(iii) competitor;

(iv) security holder of a party; or

(v) the person's participation is in the public interest.

(5) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.

(6) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

R23-1-1701. Statutory and Rule Requirements.

Appeals to a protest decision shall be conducted in accordance with the requirements set forth in Section 63G-6a-1701 through 63G-6a-1706, Utah Procurement Code. Utah Administrative Code Rules R33-17-101 through R33-17-105 shall also apply.

R23-1-1801. Process.

(1) A person who receives an adverse decision, or a procurement unit (the Division), may appeal a decision of a procurement appeals panel to the Utah Court of Appeals within seven days after the day on which the decision is issued.

(2) All appeals to the Utah Court of Appeals are subject to the provisions of the requirements set forth in Section 63G-6a-1801 through 63G-6a-1803.

(3) The Division may only appeal a procurement appeals panel decision in accordance with Section 63G-6a-1802(2).

R23-1-1901. Encouraged to Obtain Legal Advice From Legal Counsel.

(1) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) Part 19 of the Utah Procurement Code, Sections 63G-6a-901 through 63G-6a-1911 contain provisions regarding:

(a) limitations on challenges of:

(i) a procurement;

(ii) a procurement process;

(iii) the award of a contract relating to a procurement;

(iv) a debarment; or

(v) a suspension; and

(b) the effect of a timely protest or appeal;

(c) the costs to or against a protester;

(d) the effect of prior determinations by employees, agents, or other persons appointed by the procurement unit;

(e) the effect of a violation found after award of a contract;

(f) the effect of a violation found prior to the award of a contract;

(g) interest rates; and

(h) a listing of determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

(3) Due to the complex nature of protests and appeals, any person involved in the procurement process, protest or appeal, is encouraged to seek advice from the person's own legal counsel.

R23-1-2001. General Provisions Related to Records.

General provisions related to records are in Part 20 of the Utah Procurement Code and in Rule R23-1-12.

R23-1-2101. Cooperative Purchasing.

Cooperative purchasing shall be conducted in accordance with the requirements set forth in Section 63G-6a-2105 and the Utah Administrative Code Rule R23-1. This Rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R23-1-2102. State Cooperative Contracts.

(1) The Division shall obtain procurement items from state cooperative contracts whether statewide or regional unless the chief procurement officer determines, in accordance with Section 63G-6a-408(5)(b)(i), that it is in the best interest of the state to obtain an individual procurement item outside the state contract.

(2) In accordance with Section 63G-6a-2105, the Division, public entities, nonprofit organizations, and agencies of the federal government may obtain procurement items from state cooperative contracts awarded by the chief procurement officer.

R23-1-2201. Reserved.

Part 22 of Title 63G, Chapter 6a, the Utah Procurement Code, does not exist at this point in time. Rules R23-1-1 through R23-1-24 are designed to match the corresponding Part of the Utah Procurement Code. When Part 22 of the Utah Procurement Code contains statutory language, the Board will consider whether to prepare draft rules for the rulemaking process.

R23-1-2301. Reserved.

Part 23 of Title 63G, Chapter 6a, the Utah Procurement Code, does not exist at this point in time. Rules R23-1-1 through R23-1-24 are designed to match the corresponding Part of the Utah Procurement Code. When Part 23 of the Utah Procurement Code contains statutory language, the Board will consider whether to prepare draft rules for the rulemaking process.

R23-1-2401. Unlawful Conduct.

Unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 2407. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R23-1-2402. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Procurement Professionals.

(1) A Division employee classified as a "Procurement Professional" shall be governed by:

(a) Part 24 of the Utah Procurement Code, "Unlawful Conduct and Penalties."

(b) Executive Order EO/003/2010 issued by the Governor (http://www.rules.utah.gov/execdocs/2010/ExecDoc149415.htm);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"

(d) Section 76-8-103, "Bribery or Offering a Bribe;" and

(e) any other applicable law.

R23-1-2403. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Employees.

(1) A Division employee not classified as a "Procurement Professional" shall be governed by:

(a) Executive Order EO/003/2010 issued by the Governor (http://www.rules.utah.gov/execdocs/2010/ExecDoc149415.htm);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"

(d) Section 76-8-103, "Bribery or Offering a Bribe;" and

(e) any other applicable law.

R23-1-2404. Socialization with Vendors and Contractors.

(1) A procurement professional shall not:

(a) participate in social activities with vendors or contractors that will interfere with the proper performance of the procurement professional's duties;

(b) participate in social activities with vendors or contractors that will lead to unreasonably frequent disqualification of the procurement professional from the procurement process; or

(c) participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the procurement professional's independence, integrity, or impartiality.

(2) If an executive branch procurement professional participates in a social activity prohibited under R23-1-2404(1), or has a close personal relationship with a vendor or contractor, the procurement professional shall promptly notify their supervisor and the supervisor shall take the appropriate action, which may include removal of the procurement professional from the procurement or contract administration process that is affected.

R23-1-2405. Financial Conflict of Interests Prohibited.

(1) A procurement conflict of interest is a situation in which the potential exists for an executive branch employee's personal financial interests, or for the personal financial interests of a family member, to influence, or have the

appearance of influencing, the employee's judgment in the execution of the employee's duties and responsibilities when conducting a procurement or administering a contract.

(2) In order to preserve the integrity of the State's procurement process, an executive branch employee may not take part in any procurement process, contracting or contract administration decision:

(a) relating to the employee or a family member of the employee; or

(b) relating to any entity in which the employee or a family member of the employee is an officer, director or partner, or in which the employee or a family member of the employee owns or controls 10% or more of the stock of such entity or holds or directly or indirectly controls an ownership interest of 10% or more in such entity.

(3) If a procurement process, contracting or contract administration matter arises relating to the employee or a family member of the employee, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the procurement, contracting or administration matter. The employee must also comply with all disclosure requirements in Utah Code Title 67 Chapter 16, Utah Public Offers' and Employees' Ethics Act.

R23-1-2406. Bias Participation Prohibitions.

(1) Division employees are prohibited from participating in any and all discussions or decisions relating to the procurement, contracting or administration process if they have a bias that would appear to a reasonable person to influence their independence in performing their assigned duties and responsibilities relating to the procurement process, contracting or contract administration or prevent them from fairly and objectively evaluating a proposal in response to a bid, RFP or other solicitation. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

(2) If an executive branch employee has an impermissible bias under Rule R23-1-2406(1) above regarding an individual, group, organization, or vendor responding to a bid, RFP or other solicitation, the employee must make a written disclosure to the supervisor and the supervisor shall take appropriate action, which may include recusing the employee from any and all discussions or decisions relating to the solicitation, contracting or administration matter in question. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

R23-1-2407. Professional Relationships and Social Acquaintances Not Prohibited.

(1) It is not a violation for an executive branch employee who participates in discussions or decisions relating to the procurement, contracting or administration process to have a professional relationship or social acquaintance with a person, contractor or vendor responding to a solicitation, or that is under contract with the State, provided that there is compliance with Rule R33-24-105, Rule R33-24-106, the Utah Public Officers' and Employees' Ethics Act, The Governor's Executive Order (EO 002 2014) "Establishing an Ethics Policy for Executive Branch Agencies and Employees," and other applicable State laws.

KEY: contracts, procurement, public buildings
March 3, 2015 63A-5-103 et seq.
Notice of Continuation February 1, 2017 63G-2-101 et seq.
63G-6-208(2)

R23. Administrative Services, Facilities Construction and Management.

R23-3. Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities.

R23-3-1. Purpose and Authority.

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

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

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

(4) This rule is also to provide the rules and standards as required by Section 63A-5-103(1)(e)(v).

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

R23-3-2. Definitions.

(1) "Agency" means as defined in Section 63A-1-103(1).

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

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

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

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

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

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

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

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

(b) "Program" may include feasibility studies, building evaluations and a master plan.

R23-3-3. When Programs Are Required.

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

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

R23-3-4. Authorization of Programs.

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

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

R23-3-5. Funding of Programs.

Programs may be funded from one of the following sources.

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

(2) Funds provided by the agency.

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

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

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

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

R23-3-6. Administration of Programming.

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

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

R23-3-7. Restrictions of Programming Firm.

(1) The Division may in its sole discretion based on the interest of the State, determine whether a programming firm (person) may be able to participate in any or all of the design or other similar aspects of a project.

(2) If there is any restriction of a programming firm to participate in future selections of a project, the Division, shall provide this restriction in any competitive solicitation, if there is one, that may be issued for selecting a programming firm. If there is no solicitation for the selection of the programming firm (i.e. sole source, small purchase, emergency procurement, etc.), then Division may simply provide any restriction of the firm's future participation in any other aspect of the project, by placing the restriction in the contract.

(3) Notwithstanding any provision of this Rule or any other Rule of this Board, the Division may terminate or suspend programming and design contracts at any time consistent with the provisions of the contract.

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

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

(a) facility master plans;

(b) programs; and

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

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

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

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

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

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

(1) For each major campus of state-owned buildings, the

agency with primary responsibility for operations occurring at the campus shall, in cooperation with the Division, develop and maintain a master plan that reflects the current and projected development of the campus.

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

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

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

R23-3-10. Standards and Requirements for a Capital Development Project Request, Including a Feasibility Study.

(1) The Board Director shall establish a form for the consideration of Capital Development Projects which provides the following:

(a) the type of request, including whether it is, in whole or part, state funded, non-state or private funded, or whether it is non-state or private funded with an operations and maintenance request;

(b) defines the appropriateness and the project scope including proposed square footage;

(c) the proposed cost of the project including the preliminary cost estimate, proposed funding, the previous state funding provided, as well as other sources;

(d) the proposed ongoing operating budget funding, new program costs and new full time employees for the operations and maintenance and other programs;

(e) an analysis of current facilities and why the proposed facility is needed;

(f) a project executive summary of why the project is needed including the purpose of the project, the benefits to the State, how it relates to the mission of the entity and related aspects;

(g) the feasibility and planning of the project that includes how it corresponds to the applicable master plan, the economic impacts of the project, pedestrian, transportation and parking issues, various impacts including economic and community impacts, the extent of site evaluation, utility and infrastructure concerns and all other aspects of a customary feasibility study for a project of the particular type, location, size and magnitude;

(h) any land banking requests; and

(i) any other federal or state statutory or rule requirements related to the project.

(2) The form referred to in subsection (1) above shall also include the scoring criteria and weighting of the scores to be used in the Board's prioritization process, including:

(a) existing building deficiencies and life safety concerns;

(b) essential program growth;

(c) cost effectiveness;

(d) project need, including the improved program effectiveness and support of critical programs/initiatives;

(e) the availability of alternative funding sources that does not include funding from the Utah legislature; and

(f) weighting for all the above criteria as published in the Five Year Building Program for each agency as published and submitted to the Utah Legislature for the General Session immediately preceding the prioritization of the Board unless the Board in a public meeting has approved a different criteria and/or weighting system.

(3) The Board shall verify the completion and accuracy of the feasibility study referred to in this Rule.

(4) A capital development request by an agency described in Section 53B-1-102 shall comply with Section 63A-5-104(2)(b)(iii).

(5) An agency may not modify a capital development project request after the deadline for submitting the request prior to the Board's October meeting, except to the extent that a modification: of the scope of the project; or the amount of funds requested, is necessary due to increased construction costs or other factors outside of the agency's control.

R23-3-11. Standards and Requirements Related to Operations and Maintenance of State-Owned Facilities.

(1) No later than October 1 of each calendar year, each agency shall report operations and maintenance expenditures for state owned facilities covering the prior fiscal year to the Board Director in accordance with Section 63A-5-103(e)(v) and this rule. All data must be entered into the Riskonnect database by the agency in accordance with the format outlined by the Board Director.

(2) The facility maintenance standards shall include utility metering requirements to track the utility costs as well as all other necessary requirements to monitor facility maintenance costs.

(3) The adopted Board facility management standards including annual reporting requirements shall be published on the Division of Facilities Construction and Management website.

(4) If the Board does not adopt new or amended facility maintenance standards, the prior adopted standards on the DFCM website shall apply.

(5) The Board Director shall oversee the conducting of facility maintenance audit for state-owned facilities.

(6) Each agency shall create operations and maintenance programs in accordance with this rule and have it included in the agency institutional line items. On or before September 1, 2016, and each September 1 of every following year, each agency shall revise the agency's budget to comply with Section 63A-5-103 and this Rule R23-3-11(6).

(7) The Board Director in the annual capital needs request sent to the agencies, shall provide an adjustment for inflationary costs of goods and services for the previous 12 months from the issuance of the annual needs request. When the annual report of each agency is reviewed by the Board and later submitted to the Office of the Legislative Fiscal Analyst and the Governor's Office of Management and Budget, it shall include the review and adjustment for inflationary costs of goods and services. All matters in this subsection shall be in accordance with Section 63A-5-103(1)(e)(v) and this rule.

(8) The report by the agencies to the Board Director shall also include the actual cost for operations and management requests for a new facility, when applicable.

R23-3-12. Operations and Maintenance Standards, Facilities Maintenance Programs and Standards.

The purpose of these programs and standards is to outline the minimum requirements for maintaining state owned facilities and infrastructures in a manner that will maximize the usefulness and cost effectiveness of these facilities in enhancing the quality of life of Utah state employees, citizens, and visitors. Additional work may be required to satisfy code or judicial requirements. All agencies and institutions shall comply and will be audited against these standards by the Board. Exempt agencies are to review their maintenance programs against these standards and to report the degree of compliance for each of their individual building level or complexes to the legislature through the Board.

(1) Documentation.

(a) Architectural and Mechanical.

(i) At least one copy of the Operations and Maintenance Manuals shall be maintained at the facility or complex.

(ii) At least one copy of the architectural, mechanical, and electrical as-built drawings shall be maintained at the facility or complex.

(iii) A mechanism shall be provided whereby as-built drawings are promptly updated upon changes in the structural, mechanical, electrical, or plumbing systems.

(iv) As-built drawings shall be reviewed periodically to ensure that they reflect the current building or infrastructure configuration to be maintained at the facility or complex.

(v) Reserve copies of all building documentation shall be archived in an appropriate and separate location from the facility.

(2) Equipment Data Base and Tagging.

(a) An appropriate equipment numbering system shall be utilized and metal, plastic tags or labels placed on all building equipment and electrical panels.

(b) All equipment name plate data shall be collected, documented, and filed in a computerized data base/computerized maintenance management system (CMMS).

(3) Corrective Maintenance.

(a) A work request system shall be defined and made available to the user of the facility/infrastructure so that maintenance problems can be reported and logged promptly by the maintenance department. A log of all requests shall be maintained indicating the date of the request and the date of completion.

(b) A work order system shall be established to govern the procedures for corrective maintenance work. The work order system shall capture maintenance time, costs, nature of repair, and shall provide a basis for identifying maintenance backlog on the facility/infrastructure.

(c) Maintenance backlogs on the facility/infrastructure shall be regularly reviewed and older requests processed so that no request goes unheeded and all requests are acted upon in a timely manner.

(d) A priority system for corrective maintenance shall be established so that maintenance work is accomplished in an orderly and systematic manner. The facility user shall be made aware of the priority of requested maintenance and the time expected to accomplish the correction. If the stated goal cannot be met, the user shall be informed of the new goal for completing the request.

(e) The agency and institution shall report to the Board Director current and accurate operations and maintenance costs tracked to the individual building level for any facility measuring 3,000 GSF or greater. Locations consisting of multiple facilities that individually do not meet the minimum GSF requirement shall be required to report operations and maintenance costs at the campus/complex level. Reporting for Individual building O and M cost shall be reported no later than October 1 of each year.

(f) All operations and maintenance expenditure reports for both direct and indirect cost shall contain current and accurate costs including but not limited to: Utilities (Electrical, Gas/Fuel, and Water in certain cases Steam, High Temp Water, Chilled Water and Sewer may need reporting), Labor, Materials, Custodial, Landscape and Grounds services, Insurance, travel, leasing and rent.

(4) Preventive Maintenance.

(a) State facilities managers shall automate preventive maintenance scheduling and equipment data bases.

(b) All equipment (e.g. chillers, boilers, air handlers and associated controls, air compressors, restroom exhaust fans, domestic hot water circulating pumps, automatic door operators, temperature control devices, etc.) shall be on a computer based preventive maintenance schedule. The frequency of preventive maintenance procedures shall be determined by manufacturer's recommendations and local craft expertise and site specific conditions.

(c) A filter maintenance schedule shall be established for HVAC filters and a record of filter changes maintained.

(d) Preventive maintenance work orders shall be issued for both contract and in house preventive maintenance and the completion of the prescribed maintenance requirements documented.

(e) Emergency generators shall be test run at least monthly. If test runs are not automatic, records of these test runs shall be maintained at the site. At least yearly, the transfer from outside power to emergency power shall be scheduled and successfully performed.

(5) Boilers.

(a) Steam Boilers.

(i) Steam boilers shall be checked daily when operational or on an automated tracking system.

(ii) Low water cut off devices shall be checked for actual boiler shut down at the beginning of the heating season and at least quarterly thereafter by duplicating an actual low-water condition.

(iii) Boiler relief valves shall be tested for proper operation at least annually.

(iv) A record of these tests shall be maintained near the location of the boiler.

(v) A daily log of the operating parameters shall be maintained on boilers when they are operational to include pressures, temperatures, water levels, condition of makeup and boiler feed water, and name of individual checking parameters.

(b) Hot Water And Steam Boilers

(i) All boilers shall receive inspections and certification as required from an authorized state agent or insurance inspector. The certificate of compliance shall be maintained at the boiler.

(ii) Monthly tests of boiler water pH and Total Dissolved Solids shall constitute the basis upon which to add water treatment chemicals. A log of these tests shall be maintained in the boiler room.

(6) Life Safety.

(a) All elevators shall receive regular inspections and maintenance by certified elevator maintenance contractors. Records of such maintenance shall be maintained at the site. Telephones within elevators shall be checked monthly for proper operation.

(i) All elevators shall have current Permits to Operate posted near the elevator equipment as required by the Utah State Labor Commission.

(b) Fire Protection Equipment.

(i) Detection and notification systems (e.g. control panel, smoke detection devices, heat sensing devices, strobe alarm lights, audible alarm indicating devices, phone line communication module, etc.) shall be inspected annually and tested for operation at least semi-annually by a properly certified technician. A record of these inspections shall be maintained and the FACP needs to be properly tagged as required by the Utah State Fire Marshal.

(ii) Halon/Ansulor pre-action systems shall be inspected and tested by a certified inspector semi-annually to ensure their readiness in the event of a fire. Testing and inspection of these systems shall be documented.

(iii) Fire extinguishers shall be inspected monthly and tagged annually by a certified inspector and all tags should be properly and legibly completed.

(iv) Automatic fire sprinkler systems, standpipes and fire pumps shall be inspected annually by a certified technician. Tags should be properly and completely filled out including the type of inspection, month and year those inspections were performed, the person who performed the inspection, and the certificate of registration number of the person performing the inspection.

(c) Uninterruptible power supply systems for data processing centers shall be inspected and tested appropriately to ensure their readiness in the event of external power interruptions. Maintenance on these systems shall be documented.

(d) Emergency directional and exit devices (e.g. exit signs, emergency lights, ADA assist equipment, alarm communicators, etc.) shall be inspected at least quarterly for proper operation.

(7) Air Conditioning and Refrigerated Equipment.

(a) Chillers.

(i) A daily log or computerized log of important data (e.g. chilled water supply and return temperature, condenser water supply and return temperature, current draw, outside air temperature, oil level and pressure, etc.) should be kept, and the information trended to identify changes in the system operation. The causes of change should then be determined and corrected to prevent possible system damage.

(ii) The systems shall be leak checked on a quarterly basis during the operating season and once during the winter.

(iii) A factory trained technician should perform a service inspection annually to include an oil analysis. Any abnormal results should be discussed with the chiller manufacturer to determine a proper course of action.

(iv) Chillers shall not be permitted to leak in excess of 15% of their total charge annually. Losses exceeding this amount are in violation of the law and may result in costly fines.

(v) Should refrigerant need to be added to a system, document the amount of refrigerant added; the cause of the loss; and type of repairs done.

(vi) An adequate supply of refrigerant for the uninterrupted operation of existing CFC chillers shall be maintained until the chiller is converted or replaced. Examples of CFCs are R11, R12, R113, R502, etc.

(vii) Maintenance personnel that perform work other than daily logs and visual inspections on CFC chillers or refrigeration equipment containing CFCs or HCFCs must by law have an EPA certification matching the type of equipment being serviced.

(viii) The condition of refrigerant cooling water systems such as cooling towers shall be checked visually at least weekly for algae growth and scaling and appropriate treatment administered.

(b) Roof Top and Package Units.

(i) Annually check and clean as needed the condenser coil and evaporator coil.

(ii) The following preventive maintenance items shall be completed annually: tighten belts, oil motors, leak check, clean evaporator pans and drains.

(iii) Quarterly check filters and replace where necessary.

(c) Small Refrigerated Equipment.

(i) Annually clean condenser coil.

(ii) Annually oil the condenser fan motor and visually inspect the equipment and make necessary repairs as needed.

(8) Plumbing.

(a) All Backflow Prevention Devices shall be tested by a certified technician at least annually and proper documentation shall be filed with the appropriate agency. Proper documentation shall be kept on site and readily available.

(b) Cross-connection control shall be provided on any water operated equipment or mechanism using water treating chemicals or substances that may cause pollution or contamination of domestic water supply.

(c) Any water system containing storage water heating equipment shall be provided with an approved, UL listed, adequately sized combination temperature and pressure relief valve, and must also be seismically strapped.

(d) Pressure vessels must be tested annually or as required and all certificates must be kept current and available on site.

(9) Electrical Systems.

(a) All electrical panels shall have a thermal-scan test performed bi-annually on all components to identify hot spots or abnormal temperatures. The results of the test shall be documented.

(b) A clearance of three feet, or as required by NEC shall be maintained around all electrical panels and electrical rooms shall not be used for general storage.

(c) Every electrical panel shall be properly labeled identifying the following: panel identifier; area being serviced by each individual breaker; and equipment being serviced by each breaker or disconnect.

(d) All pull boxes, junction boxes, electrical termination boxes shall have proper covers in place and panels accessible to persons other that maintenance personnel shall remain locked to guard against vandalism or personal injury.

(e) Only qualified electrical personnel shall be permitted to work on electrical equipment.

(10) Facility Inspections.

(a) The facility shall periodically receive a detailed and comprehensive maintenance audit. The audit shall include HVAC filter condition, mechanical room cleanliness and condition, corrective and preventive maintenance programs, facility condition, ADA compliance, level of performance of the janitorial service, condition of the grounds, and a customer survey to determine the level of user satisfaction with the facility and the facility management and maintenance services.

(b) A copy of the above audit shall be maintained at the facility.

(c) Each year a Facility Risk Management Inspection shall be conducted, documented, and filed with the Risk Management Division of the Department of Administrative Services.

(d) Actions necessary to bring the facility into compliance with Risk Management Standards for routine maintenance items shall be completed within two months following the above Risk Management Inspection. Items requiring capital expenditures shall be budgeted and accomplished as funds can be obtained.

(e) Every five years the facility shall be inspected and evaluated by an Architect/Engineer (A/E), qualified third party or qualified in-house personnel to determine structural and infrastructural maintenance and preventive maintenance needs.

(i) The structural inspection and evaluation may include interior and exterior painting, foundations, walls, carpeting, windows, roofs, doors, ADA and OSHA compliance, brick work, landscaping, sidewalks, structural integrity, and exterior surface cleanliness.

(ii) The mechanical and electrical evaluation shall include the HVAC systems, plumbing systems, security, fire prevention and warning systems, and electrical distribution systems.

(f) The above inspection shall be documented and shall serve as a basis for budgeting for needed capital improvements.

(g) Intrusion alarm systems that communicate via phone line shall be tested monthly to ensure proper operation.

(h) Periodic inspections of facilities may be requested of local fire departments and the identified deficiencies promptly corrected. These inspections and corrections shall be documented and kept on file at the facility.

(11) Indoor Air Quality and Energy Management.

(a) Indoor air quality shall be maintained within pertinent ASHRAE, OSHA, and State of Utah guidelines.

(b) All individual building utility costs (gas, electric, water, etc.) at facilities meeting the criteria listed in section 3.5 of the Facility Maintenance Standards shall be metered and reported back to the Board Director by October 1 of each year and made available at the facility so that energy usage can be accurately determined and optimized.

(c) Based on the ongoing analysis of energy usage, appropriate energy conservation measures shall be budgeted for, implemented, and the resulting energy savings documented.

(12) The following documents shall be on hand at the facility (where applicable) in an up to-date condition:

(a) A Hazardous Materials Management Plan;

(b) An Asbestos Control and Management Plan;

(c) A Laboratory Hygiene Plan;

(d) A Lockout/Tag out Procedure for Performing

Maintenance on Building Equipment;
(e) A Blood Born Pathogen Program;
(f) An Emergency Management Plan to include emergency evacuation and disaster recovery; and
(g) A Respirator Program.

KEY: planning, public buildings, design, procurement
January 20, 2017 63A-5-103
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R23. Administrative Services, Facilities Construction and Management.
R23-19. Facility Use Rules.
R23-19-1. Purpose.

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

R23-19-2. Authority and Applicability.

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

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

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

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

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

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

R23-19-3. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Any required fee subject to the following:

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

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

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

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

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

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

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

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

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

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

(b) a container on a noncombustible surface, not exceeding one quart (946.g ml) capacity with a controlled pouring device that will limit the flow to a one ounce (29.6 ml) serving.

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

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

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

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

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

(iii) have a tip-over safety device;

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

(v) be equipped with a programmable thermostat; and

(vi) be equipped with an overheat protection feature.

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

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

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

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

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

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

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

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

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

(10) All costs to repair any damage or replace any destruction, regardless of the amount or cost of restoration or refurbishing shall be at the expense of the persons(s) responsible for such damage or destruction.

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

(12) Littering is prohibited.

(13) Decorations.

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

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

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

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

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

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

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

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

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

(15) The following applies to artificial trees:

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

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

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

(18) Set up/Clean up.

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

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

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

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

(20) Compliance with Laws.

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

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

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

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

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

(21) Security and Supervision at Events.

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

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

(22) Photography, Portraits and Video/Filming.

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

(b) This Subsection (22) shall not apply to tourists and does not apply to the extent it is the exercise of a free speech activity.

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

(24) Liability.

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

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

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

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

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

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

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

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

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

(b) The event would conflict or interfere with a state sponsored activity, a time or place reserved for freedom of speech activities, the operation of state business, or a legislative session; and/or

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

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

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

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

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

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

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

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

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

R23-19-6. Commercial Solicitation Policy.

(1) In general, commercial solicitation is prohibited.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R23-19-7. Waivers.

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

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

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

R23-19-8. Political Signs.

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

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

KEY: public buildings, facilities use, space heaters
August 7, 2014 63A-5-103
Notice of Continuation February 1, 2017 63A-5-204

R23. Administrative Services, Facilities Construction and Management.
R23-20. Free Speech Activities.
R23-20-1. Purpose.

(1) The purpose of this rule is to:

(a) facilitate constitutionally protected free speech and assembly at state facilities and grounds.

(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 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;

(d) designate areas under the Managing Agency's control, 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 facilitate constitutionally protected free speech activities and public assembly.

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

(a) to facilitate constitutionally protected free speech activities and public assembly;

(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 all persons visiting or using state facilities and grounds;

(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 state facilities and grounds 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; and

(g) to inform persons of their responsibilities regarding littering, damage to, and vandalism of state facilities and grounds.

R23-20-2. Authority.

This rule is adopted pursuant to the authority granted to the Board under Sections 63A-5-103 and 63A-5-204. The Managing Agency may adopt policies and procedures to implement this rule.

R23-20-3. Definitions.

The definitions of rule R23-19-3 shall apply to this rule R23-20. 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 state facilities and grounds 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 Managing Agency 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 activities 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 of the state facilities and grounds open to the public.

R23-20-4. Free Speech and Freedom of Assembly; In General.

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 state facilities and grounds in any lawful form or manner as guaranteed by the constitutions of the state of Utah and the United States.

R23-20-5. 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 at state facilities and grounds. 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 Facility Use Rules, Exception. Free speech activities shall be subject to R23-19-1 et seq., except that, in the case of conflict, the provisions of this rule R23-20 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 5:00 p.m.

(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 state facilities and grounds that contain storage, utilities and

technology servicing the state facilities and grounds 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, parade, march or vigil may only be conducted on the public areas of the grounds and not inside the facilities.

(c) 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 at state facilities and grounds in the areas open to the public, without interference from state security, provided that it is done in a non-aggressive 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 state facilities and grounds.

(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 Managing Agency.

(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 standard form prepared by the Managing Agency.

(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 Managing Agency 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 Managing Agency 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.

R23-20-6. 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 Managing Agency 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 Managing Agency'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 State 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 Managing Agency.

(i) As soon as reasonably possible, but no later than two (2) working days after receipt of a completed registration, the Managing Agency shall issue a determination, which may include lawful conditions, or notice of denial of the registration application.

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

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

(ii) Within three (3) working days after the Managing Agency receives the written appeal, the Managing Agency may modify or affirm the determination.

(iii) If the matter is still unresolved after the issuance of the Managing Agency's reconsideration determination, the applicant may appeal the matter, in writing, within ten (10) calendar days to the Executive Director of the Department of Administrative Services who will determine the process of the appeal and provides for a determination within five (5) 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 of the Department of Administrative Services or the Managing Agency of the need to make an immediate consideration of the appeal.

R23-20-7. Expedited Review of Free Speech Concern.

If any person claims to be inhibited from the exercise of constitutionally protected free speech by a public officer, officer or other person at any state facilities and grounds, such person is advised to promptly notify the Managing Agency. The Managing Agency will then take reasonable steps in an attempt to resolve the matter.

KEY: rally, free speech, assembly
June 7, 2007 63A-5-103
Notice of Continuation February 1, 2017 63A-5-204

R23. Administrative Services, Facilities Construction and Management.
R23-30. State Facility Energy Efficiency Fund.
R23-30-1. Purpose.

This rule is for the purposes of:

(1) conducting the responsibilities assigned to the State Building Board and the Division of Facilities Construction and Management in managing the State Facility Energy Efficiency Fund and implementing the associated revolving loan program established in Utah Code Section 63A-5-603; and

(2) establishing requirements for eligibility for loans from the State Facility Energy Efficiency Fund, procedures for accepting, evaluating, and prioritizing applications for loans, and the terms and conditions for loans.

R23-30-2. Authority and Requirements for This Rule.

This Rule is authorized by Section 63A-5-603.

R23-30-3. Definitions.

(1) "Board" means the State Building Board.

(2) "Energy cost payback" or "cost payback" means the period of time, generally expressed in years, that is needed for the energy cost savings of an energy efficiency project to equal the cost of the energy efficiency project. It does not include the time-value of money.

(3) "Energy savings" means monies not expended by a state agency as the result of energy efficiency measures.

(4) "Fund" means the State Facility Energy Efficiency Fund under Section 63A-5-603.

(5) "Quarter" means a three month period beginning with one of the following dates: January 1, April 1, July 1, and October 1.

(6) "SBEEP" means the State Building Energy Efficiency Program, a program within the Division of Facilities Construction and Management, which is required by Section 63A-5-603 to serve as staff to the revolving loan program associated with the State Facilities Energy Efficiency Fund.

(7) "DFCM" means the Division of Facilities Construction and Management.

(8) "State Agency" means a state agency as defined in Section 63A-5-701.

(9) "SBEEP Manager" means the designee of the DFCM Director that manages the SBEEP Program.

R23-30-4. Eligibility of Projects for Loans.

(1) Eligibility for loans from the Fund is limited to state agencies.

(2) Loans may be used only by state agencies to fully or partially finance energy efficiency projects within buildings owned and controlled by the state.

(3) For energy efficiency projects involving renovation, upgrade, or improvement of existing buildings, the following project measures may be eligible for loan financing from the Fund:

(a) building envelope improvements;

(b) increase or improvement in building insulation;

(c) lighting upgrades;

(d) lighting delamping;

(e) heating, ventilation, and air conditioning (HVAC) replacements or upgrades;

(f) improvements to energy control systems;

(g) other energy efficiency projects or programs that a state agency can demonstrate will result in a reduction in the consumption of energy; and

(h) renewable energy projects.

(4) There is no limit to the total number of loans a single state agency may receive from the Fund.

(5) An energy efficiency project is eligible for a loan only if the loan criteria is met, including an energy cost payback, all subject to approval by the Board.

R23-30-5. Eligible Costs.

(1) This Rule R23-30-5 defines the specific costs incurred by an energy efficiency project that may be eligible for financing from the Fund.

(2) The following direct costs of an energy efficiency project may be eligible for financing, subject to the remaining conditions of this section:

(a) building materials;

(b) doors and windows;

(c) mechanical systems and components including HVAC and hot water;

(d) electrical systems and components including lighting and energy management systems;

(e) labor necessary for the construction or installation of the energy efficiency project;

(f) design and planning of the energy efficiency project;

(g) energy audits that identify measures included in the energy efficiency project; and

(h) inspections or certifications necessary for implementing the energy efficiency project.

(3) The following costs are not eligible for financing from the Fund: the costs of a renovation project that are not directly related to energy efficiency measures;

(4) in cases for which the state agency receives a financial incentive or rebate from a utility or other third party for undertaking some or all of the measures in an energy efficiency project, such incentives or rebates are to be deducted from the costs that are eligible for financing from the Fund. No loans made from the Fund may exceed the final cost incurred by the state agency for the project after third party financing.

(5) For an energy efficiency project undertaken as part of the renovation of an existing building, building components or systems that are covered by the prescriptive requirements of the Utah Energy Code must exceed the minimum Utah Energy Code requirements in order for their costs to be eligible for a loan from the Fund. In addition, each project must comply with all applicable DFCM energy design requirements as well as all applicable codes, laws and regulations.

R23-30-6. Loan Application Process.

(1) The Board shall receive and evaluate applications for loans from the Fund. Notice of due dates for applications will be made available to state agencies no less than thirty (30) days in advance of the next scheduled Board meeting at which applications will be evaluated.

(2) State agencies interested in applying for a loan should first contact the SBEEP Manager. The SBEEP Manager will consult or meet with the state agency to make an initial assessment of the strength or weakness of a proposed project. The SBEEP Manager may also choose to conduct a site visit and inspection of the proposed project location prior to the submittal of an application and the state agency shall cooperate with the SBEEP Manager in making the relevant aspects of site available for such site visit and inspection. The SBEEP Manager may assist state agencies in assessing potential project measures and in preparing an application.

(3) Applications for loans will be made using forms developed by the SBEEP Manager. State agencies shall provide the following information on the forms developed by the SBEEP Manager and approved by the Board:

(a) name and location of the state agency;

(b) name and location of the building or buildings where the energy efficiency project will take place;

(c) a description of the building or buildings, including what the building is used for, seasonal variations in use, general construction of the building, and square footage;

(d) a description of the current energy usage of the

building, including types and quantities of energy consumed, building systems, and the age of the building and the particular systems and condition;

(e) a description of the energy efficiency project to be undertaken, including specific measures to be undertaken, the cost or incremental cost of each measure, and the equipment or building materials to be installed;

(f) projected or estimated energy savings that result from each measure undertaken as part of the project;

(g) projected or estimated energy cost savings from each measure undertaken as part of the project;

(h) a description of how energy savings and cost savings will be measured and verified using objective and verifiable post-construction measures, that take into account fluctuations in energy cost and temperature, as well as describing the commissioning procedures for the project;

(i) a description of any additional community or environmental benefits that may result from the project; and

(j) plans and specifications shall accompany the form which describes the proposed energy efficiency measures.

(4) Applications shall be received for the Board by the SBEEP Manager. The SBEEP Manager will conduct an initial review of each application. This initial review will be for the purpose of determining the completeness of the application, whether additional information is needed, provide advice on the likelihood that proposed projects, measures, and costs may be eligible for loan financing, and to assist the state agency in improving its application.

(5) When the SBEEP Manager has determined that an application is complete and that the proposed project complies with this rule, the application will be forwarded to the Board for its evaluation.

(6) The SBEEP Manager shall make a recommendation for each application to the Board. Based upon the score as determined by the SBEEP Manager, the SBEEP Manager will make recommendations to the Board for the funding of energy efficiency projects. The SBEEP Manager may have the assistance of others with the appropriate expertise to assist with the review of the application. The SBEEP Manager and any others that assist the SBEEP Manager in scoring the application must disclose to the Board any conflicts of interest that exist in regard to the review of the application. The SBEEP manager shall make a recommendation to the Board based on the following criteria and scoring:

(a) the feasibility and practicality of the project (maximum 30 points);

(b) the projected energy cost payback period of the project (maximum 20 points);

(c) the energy cost savings attributable to eligible energy efficiency measures (maximum 30 points); and

(d) the environmental and other benefits to the state and local community attributable to the project (maximum 20 points);

(e) the availability of another source of funding may result in a reduction in the number of overall points in proportion to the likelihood of such other source of funding and the degree to which the source of other funding will fund the entire project. If the other source of funding is likely and funds the entire project, then the SBEEP Manager may recommend to the Board that the project is ineligible for funding and the Board may so determine;

(f) if there are matching funds from another source that are available for the project, the SBEEP Manager may add points to the overall score to the project in proportion to the likelihood that the matching funds will be available and the degree to which the matching funds applies to the entire project; and

(g) the SBEEP Manager may deduct points from the score of the entire project if the state agency has not used funds properly in the past, not performed the work properly in the past, not provided annual reports or access for inspections, any of which based on the degree of noncompliance.

(7) The SBEEP Manager shall provide advice and recommendations to the Board. For applications that receive an average score of less than 70 points, the SBEEP Manager shall recommend that the Board not provide a loan from the Fund. Applications receiving an average score over 70 will normally be recommended by the SBEEP Manager for funding. However, if the current balance of the fund does not permit for the funding of all projects with an average score over 70, the SBEEP Manager will recommend, beginning with the highest scoring application and working downward in score, those applications that may be funded given the current balance of the Fund. The SBEEP Manager is not authorized to make decisions regarding the public's business in connection with the Fund. The Board is the decision making authority with regard to the award of loans from the Fund.

(8) Based upon the SBEEP Manager's scoring, evaluations and recommendations, SBEEP will prepare a memorandum for the Board that will:

(a) provide a brief description of each project reviewed by the SBEEP Manager;

(b) list the energy savings, energy cost savings, and cost payback for each project as estimated by the applicant;

(c) list the energy savings, energy cost savings, and cost payback for each project as estimated by the SBEEP technical specialist for the program;

(d) list the total score and the score for each evaluation criterion for each application;

(e) specify projects recommended for funding and those not recommended for funding;

(f) provide a brief explanation of the SBEEP Manager's rationale for each application that is not recommended for funding.

This memorandum is to be provided to each member of the Board no less than seven (7) calendar days prior to the next scheduled Board meeting at which applications will be evaluated.

(9) At its next scheduled meeting after the SBEEP Manager has submitted the recommendations to the Board, the Board will consider pending applications for loans from the Fund and will review the SBEEP Manager's recommendations for each project. The Board will also provide an opportunity for applicants and other interested persons to comment regarding the recommendations and information provided by the SBEEP Manager.

(10) When considering Loan applications, the Board may modify the dollar amount or project scope for which a loan is awarded if the Board determines that individual measures included in a project do not meet the requirements of this rule, are not cost effective, or that funds could better be used for funding of other projects.

(11) In reviewing energy efficiency measures for possible funding after receiving the report and recommendations of the SBEEP Manager and other testimony and documents provided to the Board, the Board shall:

(a) review the loan application and the plans and specifications for the energy efficiency measures;

(b) determine whether to grant the loan by applying the loan eligibility criteria; and

(c) if the loan is granted by the Board, prioritize the funding of the energy efficiency measures by applying the prioritization criteria.

(12) The Board may condition approval of a loan application and the availability of funds on assurances from the state agency that the Board considers necessary to ensure that the state agency:

(a) uses the proceeds to pay the cost of the energy efficiency measures; and

(b) implements the energy efficiency measures.

R23-30-7. Loan Terms.

(1) The amount of a loan award approved by the Board represents a maximum approved project cost. The final value of any loan may vary from the Board-approved amount according to the actual incursion of costs by the state agency. In cases where costs have exceeded those presented in the initial application, a state agency may request that the Board increase its loan award, by filing a written request with the SBEEP Manager. The Board can approve such request if good cause has been submitted by the state agency for such increase, and may deny a request in its sole discretion.

(2) After approval of a loan application by the Board, a state agency must complete the project in accordance with the construction schedule provided in the approved application for the energy efficiency project. If the state agency is unable to complete the project on time, prior to the deadline, the state agency may request an extension from the Board, by filing a written request with the SBEEP Manager, if good cause has been submitted by the state agency for such extension.

(3) Loan amounts from the Fund will be disbursed only upon documentation of actual costs incurred from the state agency during construction of the energy efficiency project.

(4) Once a project has been completed as determined by the SBEEP Manager, the state agency shall provide to the SBEEP Manager, documentation of actual costs incurred, such as invoices from contractors, as well as information on any third party financial incentives received. SBEEP will use this information to determine the actual cost of the project measures approved by the Board.

(5) The final loan amount will be equal to actual costs incurred for the project minus the value of any third party incentives received unless:

(a) this amount exceeds the amount approved by the Board, in which case the loan amount will be set at the amount originally approved by the Board; or

(b) this amount exceeds the amount approved by the Board and the Board increases the loan award at the request of the state agency.

(6) The Board will establish repayment terms and interest rates.

(7) State Agencies that are approved by the Board for a loan award will enter into a contract with the Board that specifies all terms applying to the loan, including the terms specified in this rule and other contract terms deemed necessary by the Board to carry out the purposes of this rule. The Board may authorize the SBEEP Manager to execute the contract on its behalf. The SBEEP Manager shall thereafter provide a copy of the contract to the Board at its next available regular meeting after complete execution of the contract, in order that the Board be kept apprised of all contracts.

R23-30-8. Reporting and Site Visits.

(1) In the period between Board approval and project completion, the state agency shall complete and provide to the SBEEP Manager, a written report at the beginning of each calendar quarter. The report shall include information on the state agency's progress in completing the energy efficiency project, its most-current estimate for the time of project completion, and any notable problems or changes in the project since Board approval, such as construction delays or cost overruns.

(2) After loan funds have been disbursed, the state agency shall complete and provide to the SBEEP manager, a report which shall include the following:

(a) a description of the performance of the building and of the performance of the measures included in the energy efficiency project using the approved objective and verifiable post-construction measures, that take into account fluctuations in energy costs and temperature, approved in the loan application process;

(b) a description of any problems that have occurred with the building or the project;

(c) a description of any changes to the building or to its operations that would cause a change in its energy consumption;

(d) copies of energy bills incurred for the building during the prior year such as electric and utility bills or shipping invoices for fuels such as fuel oil or propane;

(e) documentation of energy consumed by the building in the prior year; and

(f) other information requested by the SBEEP Manager or deemed important by the state agency.

(3) Approximately one year after project completion, the SBEEP Manager will conduct a site visit to the location of the energy efficiency project to verify project completion and assess the success of the project. Additional site visits may also be conducted by the SBEEP Manager during the repayment period. Loan recipients will assist the SBEEP Manager with such site visits, including providing access to all components of the energy efficiency project.

KEY: energy, efficiency, agencies, loans
January 20, 2017 63A-5-603
Notice of Continuation July 15, 2013

R25. Administrative Services, Finance.
R25-14. Payment of Attorney's Fees in Death Penalty Cases.
R25-14-1. Authority and Purpose.

(1) This rule is enacted pursuant to Section 78B-9-202.

(2) The purpose of the rule is to establish the procedures for payment of attorney's fees and litigation expenses by the Division of Finance to legal counsel appointed by courts to represent indigent persons sentenced to death who request representation to file an action under Title 78B, Chapter 9, Post-Conviction Remedies Act.

(3) All payments under this rule are subject to the availability of funds appropriated by the Utah State Legislature for the purpose of making these payments.

(4) This rule applies to fees and expenses incurred on and following the effective date of this rule.

R25-14-2. Request for Payment.

To obtain payment for attorney's fees and litigation expenses, counsel appointed by a court, pursuant to Section 78B-9-202, shall:

(1) Present to the Division of Finance a certified copy of the court order of appointment before or at the time the first request for payment is submitted.

(2) Obtain the court's review and written approval certifying that the fees and expenses were reasonable in accordance with Section 78B-9-202 and this rule.

(3) Submit the court's written approval and a request for payment to the Division of Finance.

(4) The request for payment must verify that the work has been performed as provided by this rule and Section 78B-9-202 and be signed by the appointed counsel. The request for payment must be sufficiently itemized to describe the services performed and such other information as may be reasonably required by the Division of Finance to properly review and process the payment. Original invoices must be submitted for all litigation expenses for which payment is requested.

(5) Before making payment, the Division of Finance may request additional supporting documentation.

(6) The Division of Finance may withhold payment for any item in a request for payment when such item conflicts with this rule or the Post-Conviction Remedies Act pending resolution of the amount requested.

R25-14-3. Scope of Services.

(1) All appointed counsel, by accepting the court appointment to represent an indigent client sentenced to death and by presenting a request for payment to the Division of Finance, agree in accordance with the Post-Conviction Remedies Act to provide all reasonable and necessary post-conviction legal services for the client, and represent the client in all legal proceedings conducted thereafter including, if requested by the client, an appeal to the Utah Supreme Court.

(2) Full compensation for the legal services performed and litigation costs incurred shall be the amounts provided in the Post-Conviction Remedies Act and this rule.

R25-14-4. Schedule of Payments of Attorney's Fees.

(1) The Division of Finance shall pay reasonable attorney's fees for appointed counsel up to the maximum rate of $125 per billable hour not to exceed a total amount on $60,000, except as provided in the subsection (2).

(2) The Division of Finance shall pay amounts exceeding the total amount if:

(a) before services were performed, appointed counsel files a request with the court to exceed the total amount allowed by subsection (1);

(b) appointed counsel serves the request upon the Division of Finance before or on the date of filing the request with the court;

(c) the Division of Finance is allowed to respond to the request; and

(d) the court determines there is sufficient cause to exceed the amount in accordance with Section 78B-9-202.

R25-14-5. Payment of Reasonable Litigation Expenses.

The Division of Finance shall pay reasonable litigation expenses not to exceed a total amount of $20,000 except as provided in subsection (2).

(2) The Division of Finance shall pay amounts exceeding the total amount if:

(a) before services are performed or expenses are incurred, appointed counsel files a request with the court to exceed the total amount;

(b) appointed counsel serves the request upon the Division of Finance before or on the date of filing the request with the court;

(c) the Division of Finance is allowed to respond to the request; and

(d) the court determines there is sufficient cause to exceed the total amount in accordance with Section 78B-9-202.

(3) Travel costs, including mileage, per diem for meals, and lodging will be reimbursed based on state rates and criteria published in rule or policy by the Division of Finance. Travel is not reasonable when the purpose of the travel can reasonably be accomplished in another way, such as by telephone or correspondence.

KEY: attorney's, fees, capital punishment, post-conviction
August 19, 2008 78B-9-202
Notice of Continuation January 6, 2017

R33. Administrative Services, Division of Purchasing and General Services.
R33-16. Protests.
R33-16-101. Conduct.

Controversies and protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through 13G-6a-604. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-16-101a. Grounds for a Protest.

(1) This Rule shall apply to all protests filed under Section 63G-6a-1602.

(2) In accordance with the requirements set forth in Section 63G-6a-1602(3)(a)(ii), a person filing a protest must include a concise statement of the grounds upon which the protest is made.

(a) A concise statement of the grounds for a protest should include the facts leading the protestor to contend that a grievance has occurred, including but not limited to specifically referencing:

(i) An alleged violation of Utah Procurement Code 63G-6a;

(ii) An alleged violation of Title R33 or other applicable rule;

(iii) A provision of the request for proposals, invitation for bids, or other solicitation allegedly not being followed;

(iv) A provision of the solicitation alleged to be:

(A) ambiguous;

(B) confusing;

(C) contradictory;

(D) unduly restrictive;

(E) erroneous;

(F) anticompetitive; or

(G) unlawful;

(v) An alleged error made by the evaluation committee or conducting procurement unit;

(vi) An allegation of bias by the evaluation committee or an individual committee member; or

(vii) A scoring criteria allegedly not being correctly applied or calculated.

(b) "Facts" as referred to in Section 63G-6a-1602(3)(a)(ii), must be specific enough to enable the protest officer to determine, if such facts are proven to be true, whether a legitimate basis for the protest exists.

(c) None of the following qualify as a concise statement of the grounds for a protest:

(i) claims made after the opening of bids or closing date of proposals that the specifications, terms and conditions, or other elements of a solicitation are ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive;

(ii) vague or unsubstantiated allegations that do not reference specific facts including, but not limited to, vague or unsubstantiated allegations by a bidder, offeror, or prospective contractor that:

(A) a bidder, offeror, or prospective contractor should have received a higher score or that another bidder, offeror, or prospective contractor should have received a lower score;

(B) a service or product provided by a bidder, offeror, or prospective contractor is better than another bidder's, offeror's, or prospective contractor's service or product;

(C) another bidder, offeror, or prospective contractor cannot provide the procurement item for the price bid or perform the services described in the solicitation; or

(D) any item listed in Section 63G-6a-1602(3)(a)(ii) of this Rule has occurred that is not specific;

(iii) Filing a protest requesting:

(A) a detailed explanation of the thinking and scoring of evaluation committee members, beyond the official justification statement described in Section 63G-6a-708,

(B) protected information beyond what is provided under the disclosure provisions of the Utah Procurement Code; or

(C) other information, documents, or explanations reasonably deemed to be not in compliance with the Utah Code or this Rule by the protest officer.

(d) In accordance with Section 63G-6a-1603(1), a protest officer may dismiss a protest if the concise statement of the grounds for filing a protest does not comply with this Rule.

R33-16-201. Verification of Legal Authority.

A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association.

R33-16-301. Intervention in a Protest.

(1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.

(2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule will be considered timely. The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.

(3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.

(4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person's interest in sufficient factual detail to demonstrate that:

(a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

(i) consumer;

(ii) customer;

(iii) competitor;

(iv) security holder of a party; or

(v) the person's participation is in the public interest.

(5) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.

(6) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

R33-16-401. Protest Officer May Correct Noncompliance,

Errors and Discrepancies.

(1) At any time during the protest process, if it is discovered that a procurement is out of compliance with any part of the Utah Procurement Code or Administrative Rules established by the applicable rule making authority, including errors or discrepancies, the protest officer, chief procurement officer, or head of a procurement unit with independent procurement authority, may take administrative action to correct or amend the procurement to bring it into compliance, correct errors or discrepancies or cancel the procurement.

KEY: conduct, controversies, government purchasing, protests
January 20, 2017 63G-6a

R51. Agriculture and Food, Administration.
R51-2. Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food.
R51-2-1. Authority.

A. These rules establish and govern the administrative proceedings before the Utah Department of Agriculture and Food, as required by Sections 63G-4-203 and 4-1-3.5.

B. These rules govern all adjudicative proceedings commencing on or after January 1, 1988. Adjudicative proceedings commencing prior to January 1, 1988, are governed by procedures presently in place.

R51-2-2. Designation of Formal and Informal Proceedings.

A. Emergency Orders: The Department may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63G-4-502.

B. All adjudicative proceedings of the Utah Department of Agriculture and Food here designated will be conducted as informal proceedings including the following, under the Utah Agricultural Code, Title 4:

1. Applications for permits, licenses, or certifications which include:

Produce Dealer
Dealer's Agent
Broker/Agent
Produce Broker
Livestock Dealer
Livestock Dealer/Agent
Livestock Auction Market
Auction Weighperson
Temporary Livestock Sale
Manufacturers of Bedding or Upholstered Furniture
Wholesale Dealer
Supply Dealer
Manufacturers of Quilted Clothing
Upholsterer With Employees
Upholsterer Without Employees
Test Milk For Payment
Operate Milk Manufacturing Plant
Make Butter
Haul Farm Bulk Milk
Make Cheese
Operate a Pasteurizer
Operate a Milk Processing Plant
Weighing and Measuring Devices/Individual Servicemen
Weighing and Measuring Devices/Agency
Nursery
Nursery Agent
Nursery Outlet
Commercial Feed
Custom Mixing of Feeds
Pesticide Product Registration
Pesticide Dealers
Pesticide Applicators
Fertilizer Registration
Fertilizer Blenders
Beekeepers
Salvage Wax
Control Atmosphere
Farm Custom Slaughter
Feed Garbage To Swine
Operate Hatchery
Meat Packing Plant
Custom Exempt Plant
Custom Slaughter Plant
Horse Show and Seasonal Permits
Cattle Show and Seasonal Permits
Lifetime Horse Permit
Lifetime Transfer Horse Permit
Brand Recording
Brand Transfer
Brand Renewal

2. Actions contesting initial agency determinations of eligibility for any of the permits, licenses, or certifications listed in R51-2-2(B)(1).

3. All adjudicative proceedings to deny, revoke, suspend, modify, annul, withdraw or amend any permit, license, or certification listed in R51-2-2(B)(1).

4. All adjudicative proceedings commenced pursuant to any notice of violation or order for corrective action outlined in 4-2-12 or 4-2-2.

5. All categories not designated as formal will be conducted as informal proceedings.

R51-2-3. Definitions.

A. "Adjudicative Proceeding" means a department action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Department actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend the authority, right, or license; and judicial review of all actions. Any matters not governed by Title 63G, Chapter 4 shall not be included within this definition.

B. "Department" means the Utah Department of Agriculture and Food.

C. "Staff" means the Utah Department of Agriculture and Food staff.

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

E. "Person" means an individual group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivisions or its units, public or private organization or entity of any character, or other agency.

F. "Presiding Officer" means the Commissioner or an individual or body of individuals designated by the Commissioner, by the Department's rules, or by statute to conduct a particular adjudicative proceeding.

G. "Party" means the Department or other person commencing an adjudicative proceeding, all respondents, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

H. "Respondent" means any person against whom an adjudicative proceeding is initiated, whether by the Department or any other person.

I. "Application" means any application for a license, permit or certification.

J. "Applicant" is a person filing an application.

K. The meaning of any other words used herein relating to agriculture shall be as defined in Title 4, or any rules promulgated thereunder.

R51-2-4. Construction.

A. These rules shall be construed in accordance with Title 63G, Chapter 4.

B. These rules shall be liberally construed to secure just, speedy, and economical determination of all issues presented to the Department.

C. Deviation from Rules

The Department may permit a waiver from these rules if:

1. The waiver is not precluded by statute;
2. No party will be prejudiced by the waiver;
3. When no health hazard will result; and
4. The Department determines that it would be in the best interest or temporary convenience of the State.

D. Computation of Time

All adjudicative proceedings commenced by this rule and which incorporate a time frame, shall have the time frame

measured in calendar days. The time frame shall be measured by excluding the first day and including the last, unless the last day is a Saturday, Sunday or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday nor State holiday.

R51-2-5. Commencement of Proceedings.

A. Proceedings commenced by the Department.

All informal adjudicative proceedings commenced by the Department shall be initiated as provided by applicable statute, and Section 63G-4-201(3)(a).

B. Proceedings Commenced by Persons Other Than the Department.

All informal adjudicative proceedings commenced by persons other than the Department shall be commenced by submitting in writing a request for agency action in accordance with Section 63G-4-201(3).

R51-2-6. Hearings.

A. The Department or a presiding officer shall hold a hearing if a hearing is required by statute, or if a hearing is permitted by statute and is requested by a party within 30 days of the commencement of the adjudicative proceeding. The Department or a presiding officer may at their discretion initiate a hearing to determine matters within their authority.

B. Notice of the hearing shall be mailed to all parties by regular mail at least ten days prior to the hearing.

C. If no hearing is held in a particular adjudicative proceeding, the presiding officer shall within a reasonable time issue a decision pursuant to Section 63G-4-203(1)(i).

R51-2-7. Intervention.

Intervention is prohibited except where a federal statute or rule requires that a state permit intervention.

R51-2-8. Pre-hearing Procedure.

The presiding officer may, upon written notice to all parties of record, hold a pre-hearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement thereof.

R51-2-9. Continuance.

If application is made to the presiding officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a continuance of the hearing.

R51-2-10. Parties to a Hearing.

A. All persons defined as a "party" are entitled to participate in hearings before the Department.

B. All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding. The presiding officer can, for good cause, limit evidence, examination, and cross examination of witnesses and arguments.

R51-2-11. Appearances and Representation.

A. Taking Appearances

Parties shall enter their appearances at the beginning of a hearing or at a time as may be designated by the presiding officer by giving their names and addresses and stating their positions or interests in the proceeding.

B. Representation of Parties

1. An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent interest in the proceeding.

2. Any party may be represented by an attorney licensed to practice in the State of Utah.

R51-2-12. Testimony, Evidence and Argument.

A. Testimony

At the hearing, the presiding officer shall accept oral or written testimony from any party. Further, the presiding officer shall have the right to question and examine any witnesses called to present testimony at a hearing.

B. Order of Presentation of Evidence

Unless otherwise directed by the presiding officer at a hearing, the presentation of evidence shall be as follows:

1. When agency action is initiated by a person other than the Department:

a. the applicant,

b. respondent,

c. staff.

2. When the Department initiates agency action:

a. staff,

b. respondent,

c. other interested parties.

During any hearing a party may offer rebuttal evidence.

C. Rules of Evidence

A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence shall be excluded. The weight to be given to evidence shall be determined by the presiding officer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent persons in the conduct of their affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible in a judicial proceeding.

D. Documentary Evidence

Duplicate copies may be received as documentary evidence. However, upon request, parties shall be given an opportunity to compare the copy with the original, if available.

R51-2-13. Decisions and Orders.

A. Report and Order

After the presiding officer has reached a final decision upon any adjudicative proceeding, he shall make and enter a signed order in writing that states the decision, the reasons for the decision, a notice of the rights of the parties to request Department reconsideration or judicial review, as appropriate, and notice of the time limits for filing a request for reconsideration or a judicial review. The order shall be based on the facts appearing in any of the Department's files and on the facts presented in evidence at any hearings.

B. Service of Decisions

A copy of the presiding officer's order shall be promptly mailed by regular mail to each of the parties.

R51-2-14. Request for Reconsideration.

A. Who may file

Within ten days after the date that an order on review is issued, any aggrieved party may file a request for reconsideration by following the procedures of Section 63G-4-302 and the following additional rules. A request is not a prerequisite for judicial review.

B. Action on the Request.

The Commissioner shall issue a written order granting or denying the request for reconsideration. If an order is not issued within 20 days after the filing of the request, the request for rehearing shall be considered denied. Any order granting rehearing shall be strictly limited to the matter specified in the order.

KEY: government hearings, appellate procedures
1988 4-1-3.5
Notice of Continuation January 3, 2017 63G-4-203

R58. Agriculture and Food, Animal Industry.
R58-1. Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals.
R58-1-1. Authority.

(1) Promulgated under the authority of Title 4, Chapter 31 and Subsections 4-2-2(1)(c)(i), and 4-2-2(1)(i).

(2) It is the intent of these rules to eliminate or reduce the spread of diseases among animals by providing standards to be met in the movement of animals within the State of Utah (INTRASTATE) and the importation of animals into the state (INTERSTATE).

R58-1-2. Definitions.

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

(2) "Animal identification number (AIN)" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States or a unique country code for any U.S. territory that has such a code and elects to use it in place of the 840 code).

(3) "Animals" means all vertebrates, except humans.

(4) "Approved livestock facility" means a stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary inspection where livestock are assembled and that has been approved by the Department.

(5) "Approved Livestock Market" means a livestock market that is licensed by the Department under Title 4, Chapter 30, Livestock Markets.

(6) "Approved Slaughter Establishment" means a State or Federally inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by State or Federal inspectors.

(7) "Approved tagging site" means a premises, authorized by Department, where livestock may be officially identified on behalf of their owner or the person in possession, care, or control of the animals when they are brought to the premises.

(8) "Brand Inspection Certificate" means an official form, issued by a government agency or other agency responsible for animal identification in the state of origin, used to transfer title of livestock; listing the identification marks of the animals(s) as well as the consignor and consignee contact information.

(9) "Camelidae" means a term referring to members of the family of animals which for the purposes of these rules includes camels (Camelus dromedarius and Camelus bactrianus), llamas (Lama glama), alpacas (Vicugna pacos) , guanacos (Lama guanicoe), and vicunas (Vicugna vicugna).

(10) "Captive Cervidae" means a term referring to members of the family of animals which for the purposes of these rules includes captive bred Caribou (Reindeer (Rangifer tarandus)), captive bred Elk (Cervus canadensis nelsoni), and captive bred Fallow deer (Dama dama) or any other captive bred cervidae allowed with permission from the State Veterinarian and the Utah Division of Wildlife Resources.

(11) "Certificate of Veterinary Inspection" means an official paper or electronic form completed by an accredited veterinarian that has examined the animal or animals listed on the certificate and has completed all disease testing or vaccinations as required.

(12) "Commuter herd" means a herd of cattle located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of cattle interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual.

(13) "Commuter herd agreement" means a written agreement between the owner(s) of a herd of cattle and the animal health officials for the States or Tribes of origin and destination specifying the conditions required for the interstate movement from one premises to another in the course of normal livestock management operations and specifying the time period, up to 1 year, that the agreement is effective. A commuter herd agreement may be renewed annually.

(14) "Dairy cattle" means all cattle, regardless of age or sex or current use, that are of a breed(s) used to produce milk or other dairy products for human consumption, including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, Milking Shorthorn, and Red and Whites.

(15) "Department" means the Utah Department of Agriculture and Food.

(16) "Designated brucellosis surveillance area" means an area within a state that has been designated by the animal health official of that state as an area of increased disease risk for bovine brucellosis.

(17) "Direct Movement" means the movement in which the animals are not unloaded enroute to their final destination, except for stops of less than 24 hours to feed, water, or rest the animals being moved, and not commingled with another producer's animals.

(18) "Exotic animal" means a rare or unusual animal pet or an animal, not commonly thought of as a pet, kept within a human household. For this chapter, rodents, reptiles, and amphibians are considered exotic animals.

(19) "Exposed Animal" means an animal that has been in contact with or on the same premises of or within a quarantine zone where animals with a contagious or communicable disease are present.

(20) "Farm of Origin" means the farm where the animal was born and remain prior to importation into the state.

(21) "Flock-based number system" means the flock-based number system that combines a flock identification number (FIN) with a producer's unique livestock production numbering system to provide a nationally unique identification number for an animal.

(22) "Flock identification number (FIN)" means a nationally unique number assigned by a State, Tribal, or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership.

(23) "Group/lot identification number (GIN)" means the identification number used to uniquely identify a "unit of animals" of the same species that is managed together as one group throughout the preharvest production chain.

(24) "Import Permit" means a number given by the Department to the issuing veterinarian that is recorded on the certificate of veterinary inspection and is required before movement of the animals into the state.

(25) "Interstate movement" means movement of animals from one State into or through any other State.

(26) "Livestock Market Veterinarian" means a Utah licensed and USDA accredited veterinarian appointed by the Utah Department of Agriculture and Food to work at approved livestock markets.

(27) "Location identification (LID) number" means a nationally unique number issued by a State, Tribal, and/or Federal animal health authority to a location as determined by the State or Tribe in which it is issued. The LID number may be used in conjunction with a producer's own unique livestock production numbering system to provide a nationally unique

and herd-unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN).

(28) "National Uniform Eartagging System (NUES)" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

(29) "Official Calfhood Vaccinate" means female bison or cattle vaccinated by a USDA Veterinary Services representative, State certified technician, or accredited veterinarian with an approved dose of RB51 vaccine or other USDA approved agent while from 4 to 12 months of age in accordance with its labeling. These cattle must be properly identified by official tattoos and ear tag or registration tattoo and be reported on an official vaccination certificate (VS Form 4-24) within 30 days to the State Veterinarian.

(30) "Official eartag" means an identification tag approved by the Department that bears an official identification number for individual animals. The official eartag must be tamper-resistant and have a high retention rate in the animal.

(31) "Official eartag shield" means the shield shaped graphic of the U.S. Route Shield with "U.S." or the State postal abbreviation or Tribal alpha code imprinted within the shield.

(32) "Official identification device or method" means a means approved by the Department of applying an official identification number to an animal of a specific species or associating an official identification number with an animal or group of animals of a specific species or otherwise officially identifying an animal or group of animals.

(33) "Official identification number" means a nationally unique number that is permanently associated with an animal or group of animals.

(34) "Officially identified" means identified by means of an official identification device or method approved by the Department.

(35) "Poultry" means domestic fowl (chickens, turkeys, ducks, geese, and guinea and pea fowl), pigeons and doves, pheasants and other gamebirds, and ratites.

(36) "Premises identification number (PIN)" means a nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority a geographically distinct location from other premises.

(37) "Qualified Feedlot" means a feedlot approved by the Utah Department of Agriculture and Food to handle heifers, cows or bulls which are either official calfhood vaccinated, or brucellosis unvaccinated animals confined to a drylot area which is used to upgrade or finish feeding animals going only to slaughter or another qualified feedlot. All such animals must be kept separate from other animals not destined for slaughter.

(38) "Quarantine" means a verbal or written restriction of movement of animals into or out of an area or premise, issued by a State Animal Health Official.

(39) "Reactor" means any animal that has been determined by a designated brucellosis epidemiologist to be infected with brucellosis based on test results, herd/flock history, and/or culture results.

(40) "Suspect" means any animal that may be infected with a contagious, infectious, or communicable disease based on test results and/or herd/flock history.

(41) "Test Eligible Cattle and Bison" means all cattle or bison six months of age or older, except:

1. Steers, spayed heifers;

2. Official calfhood vaccinates of any breed under 24 months of age which are not parturient, springers, or post parturient.

(42) "United States Department of Agriculture (USDA) approved backtag" means a backtag issued by APHIS that provides a temporary unique identification for each animal.

(43) "Zoological animal" means an animal kept at a zoological garden (zoo) or other exhibition that is inspected on a regular basis by the United States Department of Agriculture.

R58-1-3. Official Identification Devices and Methods.

(1) Any State, Tribe, accredited veterinarian, or other person or entity who distributes official identification devices must maintain for 5 years a record of the names and addresses of anyone to whom the devices were distributed.

(2) An official identification number is a nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems:

(a) National Uniform Eartagging System (NUES).

(b) Animal identification number (AIN).

(c) Location-based number system.

(d) Flock-based number system.

(e) Any other numbering system approved by the animal health official of the state of origin for the official identification of animals.

(3) The Department has approved the following official identification devices or methods for the species listed.

(a) The Department may authorize the use of additional devices or methods for a specific species if the Department determines that such additional devices or methods will provide for adequate traceability.

(4) Cattle and bison that are required to be officially identified for interstate movement must be identified by means of:

(a) An official eartag; or

(b) Brands registered with a recognized brand inspection authority and accompanied by an official brand inspection certificate, when agreed to by the shipping and receiving State or Tribal animal health authorities; or

(c) Tattoos and other identification methods acceptable to a breed association for registration purposes, accompanied by a breed registration certificate, when agreed to by the shipping and receiving State or/Tribal animal health authorities; or

(d) Group/lot identification when a group/lot identification number (GIN) may be used.

(5) Horses and other equine species that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) A description sufficient to identify the individual equine including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (e.g., brands, tattoos, scars, cowlicks, blemishes or biometric measurements); or

(b) Electronic identification that complies with ISO 11784/11785; or

(c) Non-ISO electronic identification injected to the equine on or before June 30, 2013; or

(d) Digital photographs sufficient to identify the individual equine.

(6) Poultry that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Sealed and numbered leg bands; or

(b) Group/lot identification when a group/lot identification number (GIN) may be used.

(7) Sheep and goats that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Electronic implants when accompanied by a certificate or owner statement that includes the electronic implant numbers and the name of the chip manufacturer; or

(b) Official eartags, including tags approved for use in the Scrapie Flock Certification Program or APHIS-approved premises identification number eartags when combined with a unique animal identification number; or

(c) United States Department of Agriculture backtags or official premises identification backtags that include a unique animal identification number, when used on sheep or goats moving directly to slaughter and when applied within 3 inches of the poll on the dorsal surface of the head or neck; or

(d) Legible official registry tattoos that have been recorded in the book of record of a sheep or goat registry association when the animal is accompanied by either a registration certificate or a certificate of veterinary inspection.

(i) These tattoos may also be used as premises identification if they contain a unique premises prefix that has been linked in the National Scrapie Database with the assigned premises identification number of the flock of origin; or

(e) Premises identification eartags or tattoos, if the premises identification method includes a unique animal number or is combined with a flock eartag that has a unique animal number and the animal is accompanied by an owner statement; or

(f) Premises identification when premises identification is allowed and the animal is accompanied by an owner statement; or

(g) Any other official identification method or device approved by the animal health official of the state of origin.

(8) Swine that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Official eartags; or

(b) United States Department of Agriculture backtags, when used on swine moving to slaughter; or

(c) Official swine tattoos, when used on swine moving to slaughter; or

(d) Ear notching when used on any swine, if the ear notching has been recorded in the book of record of a purebred registry association; or

(e) Tattoos on the ear or inner flank of any swine, if the tattoos have been recorded in the book of record of a swine registry association;

(f) For slaughter swine and feeder swine, an eartag or tattoo bearing the premises identification number assigned by the State animal health official to the premises on which the swine originated; or

(g) Any other official identification device or method that is approved by the animal health official of the state of origin; or

(h) Group/lot identification when a group/lot identification number (GIN) may be used.

(9) Captive cervids that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Official eartag; and

(b) A tattoo that is placed peri-anally or inside the right ear and consist of a number assigned by the animal health official of the state of origin; or

(c) A microchip that has been placed in the right ear.

R58-1-4. Intrastate Cattle Movement - Rules - Brucellosis.

(1) The State Veterinarian may require brucellosis testing of cattle, bison, and elk, moving intrastate as necessary to protect against potential disease threat or outbreak.

(2) Utah Department of Agriculture and Food Livestock Inspectors will help regulate intrastate movement of cattle according to Brucellosis rules at the time of change of ownership inspection.

R58-1-5. Interstate Importation Standards.

(1) No animal, poultry or bird of any species or other animal including wildlife, that is known to be affected with or has been exposed to a contagious, infectious or communicable disease, or that originates from a quarantined area, shall be shipped, transported or moved into the State of Utah until written permission for such entry is first obtained from the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services Division, and the Utah Department of Agriculture and Food, State Veterinarian or Commissioner of Agriculture.

(a) Failure to obtain written permission may result in a citation.

(2) An official Certificate of Veterinary Inspection issued by an accredited veterinarian is required for importation of all animals.

(3) A copy of the certificate shall be immediately forwarded to the Utah Department of Agriculture and Food by the issuing veterinarian or the animal health official of the state of origin within 7 calendar days from date on which the Certificate of Veterinary Inspection or other document is received or issued.

(4) Import permits for livestock, poultry and other animals may be obtained by telephone or via the internet to the accredited veterinarian responsible for issuing a Certificate of Veterinary Inspection.

(5) Certificates of Veterinary Inspection are considered valid for 30 days from the date of inspection.

R58-1-6. Cattle and Bison.

(1) A Certificate of Veterinary Inspection and an import permit must accompany all cattle and bison imported into the state.

(2) All cattle and bison must carry some form of individual identification as listed in R58-1-3(4).

(a) Individual identification must be listed on the Certificate of Veterinary Inspection.

(i) Official individual identification used for testing purposes must be shown on the Certificate of Veterinary Inspection; or

(ii) A copy of the official brucellosis or tuberculosis test sheets must be stapled to each copy of the Certificate of Veterinary Inspection.

(b) All cattle and bison imported into Utah from Canada, except those imported directly to slaughter, must be permanently branded with the letters CAN, not less than two (2) inches high nor more than three (3) inches high, placed high on the right hip.

(3) The import permit number must be listed on the Certificate of Veterinary Inspection.

(4) The following cattle are exempted from (1) above:

(a) Cattle consigned directly to slaughter at an approved slaughter establishment; or

(b) Cattle consigned directly to a State or Federal approved Auction Market.

(c) Movements under Subsections R58-1-5(4)(a), and R58-1-5(4)(b) must be in compliance with state and federal laws and regulations and must be accompanied by a weighbill, brand certificate, or similar document showing some form of positive identification, signed by the owner or shipper stating the origin, destination, number and description of animals and purpose of movement.

(d) Commuter cattle are exempt as outlined in Subsection R58-1-5(6).

(5) A brand inspection certificate or proof of ownership, which indicates the intended destination, is required for cattle entering the state.

(6) Commuter cattle may enter Utah or return to Utah after grazing if the following conditions are met.

(a) A commuter permit approved by the import state and the State of Utah must be obtained prior to movement into Utah. This will allow movements for grazing for the current season if the following conditions are met:

(i) All cattle shall meet testing requirements as to State

classification for interstate movements as outlined in 9 CFR 1-78, which is incorporated by reference; USDA, Animal and Plant Health Inspection Services, Brucellosis Eradication, Uniform Methods and Rules, October 1, 2003, and approved by cooperating States.

(ii) Commuter cattle shall not be mixed with quarantined, exposed, or suspect cattle nor change ownership during the grazing period.

(iii) All bulls used in the commuter herd must be tested annually for trichomoniasis as required by the State of Utah.

(b) No quarantined, exposed or reactor cattle shall enter Utah.

(7) Prior to importation of cattle or bison into Utah the following health restrictions must be met.

(a) Bison and cattle heifers of vaccination age between four and 12 months must be officially calfhood vaccinated for brucellosis prior to entering Utah, unless;

(i) going directly to slaughter, or

(ii) qualified feedlot to be sold for slaughter, or

(iii) to an approved livestock market to be sold for slaughter or for vaccination.

(iv) Bison and cattle heifers of vaccination age may be vaccinated upon arrival by special permit from the State Veterinarian.

(b) All female bison and cattle over 12 months of age imported to Utah must have evidence of a brucellosis calfhood vaccination tattoo to be imported or sold into the State of Utah, unless;

(i) going directly to slaughter, or

(ii) qualified feedlot to be sold for slaughter, or

(iii) to an approved livestock market to be sold for slaughter, or

(iv) tested negative for Brucella abortus within 30 days prior to entry.

(c) Test eligible cattle imported from states designated as brucellosis free, but are coming from a designated brucellosis surveillance area within that state, must be tested negative for brucellosis within 30 days prior to entry.

(i) Test eligible cattle may enter the state prior to testing with approval from the State Veterinarian but must be tested immediately upon arrival and the cattle must be kept isolated away from other cattle until tested negative.

(d) All test eligible cattle imported from states that have not been designated as brucellosis free must test negative for brucellosis within 30 days before movement into Utah.

(e) Exceptions to the above testing requirements include exhibition animals and test eligible cattle imported to Utah and moving directly to:

(i) an approved livestock market, or

(ii) to a "qualified feedlot", or

(iii) for immediate slaughter to an approved slaughter establishment.

(f) No reactor cattle, or cattle from herds under quarantine for brucellosis will be allowed to enter the state except when consigned to an approved slaughter establishment. An import permit and a Veterinary Services Form 1-27 prior to shipment are also required.

(g) Entry of cattle which have been retattooed is not permitted unless they are moved for immediate slaughter to an approved slaughter establishment or to not more than one state or federal approved market for sale to a qualified feedlot or slaughtering establishment.

(h) A negative tuberculosis test is required within 60 days prior to shipment for all dairy cattle 2 months of age and older and bison 6 months of age and older.

(i) Breeding cattle originating within a quarantined area or from reactor or exposed herds and all cattle from an area which is not classified as Tuberculosis Free are required to be tested for tuberculosis within 60 days prior to entry to Utah.

(j) Rodeo bulls and roping steers must be tested annually during the calendar year for tuberculosis prior to entry to Utah.

(k) No cattle infested with, or exposed to scabies shall be moved into Utah. Cattle from a county where scabies has been diagnosed during the past 12 months must be officially treated within 10 days prior to shipment into Utah. The date of treating and products used must be shown on the Certificate of Veterinary Inspection.

(l) No cattle infested with ticks that can transmit splenic or tick fever, or exposed to tick infestations shall be imported into the State of Utah for any purpose.

(m) All bulls imported to Utah shall be in compliance with R58-21-3(A), which requires testing of all bulls over twelve months of age for trichomoniasis prior to entry, with some exceptions which are for slaughter, rodeo, exhibition, and bulls kept in confinement.

R58-1-7. Horses, Mules, Asses, and Other Equidae.

(1) Equidae may be imported into the State of Utah when accompanied by an official Certificate of Veterinary Inspection.

(2) The Certificate of Veterinary Inspection must show a negative Equine Infectious Anemia (EIA)(Coggins - AGID or ELISA) test within one year previous to the time the certificate was issued.

(a) Entry of equidae into Utah shall not be allowed until the EIA test has been completed and reported negative.

(b) Equidae which test positive to the EIA test shall not be permitted entry into Utah, except by special written permission from the State Veterinarian.

(c) A nursing foal less than six (6) months of age accompanied by its EIA negative dam and equidae moving directly to an approved livestock market are exempt from the test requirements.

(3) Utah horses returning to Utah as part of a commuter livestock shipment are exempted from the Certificate of Veterinary Inspection requirements; however, a valid Utah horse travel permit as outlined under Sections 4-24-22 or 4-24-23 and Section R58-9-4 is required for re-entering Utah.

(4) An import permit issued by the Department must accompany all stallions or semen.

(5) All stallions used for breeding that enter Utah or stallions whose semen will be shipped to Utah shall be tested for Equine Viral Arteritis (EVA) by an accredited veterinarian within 30 days prior to entry.

(a) Exceptions are stallions that have proof of negative EVA status prior to vaccination and proof of subsequent yearly vaccination.

(b) The EVA test or vaccination status must be recorded on the Certificate of Veterinary Inspection.

(c) Breeding stallions and semen infected with Equine Arteritis Virus must be handled only on an approved facility as required by R58-23.

R58-1-8. Swine.

(1) Swine may be shipped into the state if the following requirements are met:

(a) All swine must be accompanied by an approved Certificate of Veterinary Inspection stating they have not been fed raw garbage.

(i) The Certificate of Veterinary Inspection must show individual identification, ear tags, tattoos, registration numbers, microchips or other permanent means.

(b) An import permit issued by the Department must accompany all swine imported into the state.

(c) All breeding and exhibition swine over the age of three months shipped into Utah shall be tested negative for brucellosis within 30 days prior to movement into the state or originate from a validated brucellosis free herd or brucellosis free state.

(i) A validated brucellosis free herd number and date of

last test is required to be listed on the Certificate of Veterinary Inspection.

(ii) Swine from states with serious disease occurrences or known populations of feral or wild hogs may be required to be tested for Brucellosis prior to entry to Utah.

(d) All breeding, feeding and exhibition swine shall be tested negative for pseudorabies within thirty days unless they originate from a recognized qualified pseudorabies free herd or pseudorabies Stage V state.

(i) Swine that have been vaccinated with any pseudorabies vaccine shall not enter the state.

(ii) Swine which are infected or exposed to pseudorabies may not enter the state, except swine consigned to a slaughterhouse for immediate slaughter and must be moved in compliance with 9 CFR 71, which is incorporated by reference.

(iii) Swine from states with known populations of feral or wild hogs may be required to be tested for Pseudorabies prior to entry to Utah.

(2) Prohibition of Non-domestic and Non-native Suidae and Tayassuidae

(a) Javelina or Peccary, and feral or wild hogs such as Eurasian or Russian wild hogs (Sus scrofa) are considered invasive species in Utah, capable of establishing wild reservoirs of disease such as brucellosis and pseudorabies.

(b) These animals are prohibited from entry to Utah except when approved by special application only for purposes of exhibition and after meeting the above testing requirements.

(c) Any person who imports Javelina, Peccary or feral or wild hogs such as Eurasian or Russian wild hogs (Sus scrofa) into Utah without prior approval by the Department shall be subject to citation and fines as prescribed by the Department or may be called to appear before an administrative proceeding by the department.

R58-1-9. Sheep.

(1) All sheep imported must be accompanied by a Certificate of Veterinary Inspection and an import permit.

(a) No sheep exhibiting clinical signs of blue tongue may enter Utah.

(b) Sheep must be thoroughly examined for evidence of foot rot and verified that they are free from foot rot.

(c) Sheep entering Utah must comply with federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.

(d) Sheep from scrapie infected, exposed, quarantined or source flocks may not be permitted to enter the state unless an official post-exposure flock eradication and control plan has been implemented.

(e) Breeding rams six months of age or older shall test negative for Brucella ovis within 30 days of entry or originate from a certified brucellosis free flock.

(i) Rams entering Utah for exhibition purposes only and returning immediately to their home state are exempt from the testing requirement.

R58-1-10. Poultry.

(1) All poultry and hatching eggs being imported into Utah must meet the following requirements:

(a) All poultry and hatching eggs must have an import permit from the Department.

(b) All poultry and hatching eggs entering Utah must have a Certificate of Veterinary Inspection or a National Poultry Improvement Plan VS Form 9-3.

(c) All poultry and hatching eggs shall originate from flocks or hatcheries that have a Pullorum-Typhoid Clean rating given by the official state agency of the National Poultry Improvement Plan (NPIP) of the state, or

(d) All poultry entering Utah from a flock or hatchery which does not have a clean rating through NPIP certification must have been tested negative for Pullorum-Typhoid within the last 30 days.

R58-1-11. Goats and Camelids.

(1) Goats being imported into Utah must meet the following requirements:

(a) Dairy goats must have an import permit from the Department and an official Certificate of Veterinary Inspection showing a negative tuberculosis test within 60 days, and a negative brucellosis test within 30 days prior to entry or be from a certified brucellosis free herd and accredited tuberculosis free herd. Thereto; there must be no evidence of caseous lymphadenitis (abscesses).

(b) Meat type goats must have an import permit from the Department and an official Certificate of Veterinary Inspection indicating they are free from any communicable diseases or exposure and that there is no evidence of caseous lymphadenitis (abscesses).

(c) Goats entering Utah must comply with Federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.

(d) Goats for slaughter may be shipped into Utah directly to an approved slaughter establishment or to an approved auction market without an official Certificate of Veterinary Inspection and an import permit but must comply with Federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.

(2) Camelids being imported into Utah must have an import permit from the Department and an official Certificate of Veterinary Inspection showing a negative tuberculosis test within 60 days, and a negative brucellosis test within 30 days prior to entry or be from a certified brucellosis free herd and accredited tuberculosis free herd.

(3) Test eligible age for both brucellosis and tuberculosis shall be 6 months of age or older for both goats and camelids.

(4) Dairy goats and camelids entering Utah for exhibition purposes only and returning immediately to their home state are exempt from the testing requirement.

R58-1-12. Psittacine and Passerine Birds and Raptors.

(1) No psittacine or passerine birds or raptors shall be shipped into the State of Utah unless an official Certificate of Veterinary Inspection accompanies the birds.

(2) The number and kinds of birds to be shipped into Utah, their origin, date to be shipped and destination must be listed on the Certificate of Veterinary Inspection.

R58-1-13. Dogs, Cats, and Ferrets.

(1) All dogs, cats and ferrets shall be accompanied by an official Certificate of Veterinary Inspection.

(2) All dogs, cats and ferrets over three months of age must be currently vaccinated against rabies before entering Utah.

(a) The date of vaccination, name of product used, and expiration date must be written on the Certificate of Veterinary Inspection.

(3) No puppies or kittens less than 8 weeks of age shall be imported into the state unless accompanied by the mother.

R58-1-14. Exotic Animals.

(1) It is unlawful for any person to import into the State of Utah any species of exotic animal that is prohibited for importation or possession as listed in Utah Administrative Code R657-3.

(2) All exotic animals (birds, mammals, and reptiles) must be accompanied by an official Certificate of Veterinary Inspection.

(3) All aquatic animals (fish, mollusk, crustacean, or amphibians) must fulfill all requirements of Utah Administrative

Code R58-17 prior to importation into the State of Utah.

R58-1-15. Game and Fur-Bearing Animals.

(1) No game or fur bearing animals will be imported into Utah without an import permit being obtained from the Department.

(2) Each shipment shall be accompanied by an official Certificate of Veterinary Inspection.

(3) All mink entering Utah shall have originated on ranches where mink viral enteritis has not been diagnosed or exposed to within the past three years.

R58-1-16. Captive Cervidae.

(1) All captive cervidae entering Utah must meet the following requirements:

(a) No captive elk will be imported into Utah unless the destination premises is licensed with the Utah Department of Agriculture and Food.

(b) No captive caribou or fallow deer will be imported into Utah unless a Certificate of Registration (COR) has been obtained from the Utah Division of Wildlife Resources.

(c) No captive cervidae will be allowed to be imported into Utah that have originated from or have ever been east of the 100 degree meridian.

(d) All captive elk imported into Utah must meet the genetic purity requirement as referenced in Title 4, Chapter 39, Section 301, Utah Code Unannotated.

(e) All captive elk must meet the following Chronic Wasting Disease (CWD) requirements:

(i) Elk must come from a state with a USDA approved herd certification program.

(ii) Elk must originate from a herd that is not affected with or is a trace back or forward herd for CWD.

(iii) Elk must originate from a herd that has had a CWD herd surveillance program for 5 years prior to movement.

(f) All captive cervidae must be permanently identified using either a microchip or tattoo.

(g) All captive cervidae must have an import permit from the Department.

(h) All captive cervidae must have an official Certificate of Veterinary Inspection showing the following:

(i) A negative tuberculosis test within 60 days of import.

(ii) Negative Brucella abortus test results from a single sample that has been tested by two USDA approved tests.

(iii) Two forms of individual animal identification.

(iv) A statement the that animals listed on the certificate are not known to be infected with Johne's Disease (Paratuberculosis)or Malignant Catarrhal Fever and have never been east of the 100 degree meridian.

R58-1-17. Zoological Animals.

(1) The entry of zoological animals to be kept in zoological gardens, or shown at exhibitions is authorized when an import permit, subject to requirements established by the State Veterinarian, has been obtained from the Department and the animals are accompanied by an official Certificate of Veterinary Inspection.

(2) Movement of these animals must also be in compliance with the Federal Animal Welfare Act, 7 USC 2131-2159.

R58-1-18. Wildlife.

(1) It is unlawful for any person to import into the State of Utah any species of live native or exotic wildlife except as provided in Title 23, Chapter 13 and Utah Administrative Code R657-3.

(2) All wildlife imports shall meet the same Department requirements as required for the importation of domestic animals.

R58-1-19. Duties of Carriers.

Owners and operators of railroads, trucks, airplanes, and other conveyances are forbidden to move any livestock, poultry, or other animals into or within the State of Utah or through the State except in compliance with the provisions set forth in these rules.

(1) Sanitation. All railway cars, trucks, airplanes, and other conveyances used in the transportation of livestock, poultry or other animals shall be maintained in a clean, sanitary condition.

(2) Movement of Infected Animals. Owners and operators of railway cars, trucks, airplanes, and other conveyances that have been used for movement of any livestock, poultry, or other animals infected with or exposed to any infectious, contagious, or communicable disease as determined by the Department, shall be required to have cars, trucks, airplanes, and other conveyances thoroughly cleaned and disinfected under official supervision before further use is permissible for the transportation of livestock, poultry or other animals.

(3) Compliance with Laws and Rules. Owners and operators of railroad, trucks, airplanes, or other conveyances used for the transportation of livestock, poultry, or other animals are responsible to see that each consignment is prepared for shipment in keeping with the State and Federal laws and regulations. Certificate of Veterinary Inspection, brand certificates, and permits should be attached to the waybill accompanying the attendant in charge of the animals.

KEY: disease control, import requirements
August 12, 2015 4-31
Notice of Continuation January 12, 2017 4-2-2(1)(I)

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

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

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

R58-3-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

KEY: brucellosis, vaccination, cattle, bison

April 16, 2014	**4-31-109**
Notice of Continuation January 12, 2017	**4-2-2(1)(c)(i)**
	4-2-2(1)(j)

R58. Agriculture and Food, Animal Industry.
R58-6. Poultry.
R58-6-1. Authority.

(1) Promulgated under authority of Section 4-31-119.

(2) It is the intent of this rule to prevent and control disease in poultry in the state of Utah.

R58-6-2. Definitions.

(1) "Administrator' means the Administrator of the United States Department of Agriculture, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

(2) "Authorized agent" means a person designated to collect official samples for submission to an authorized laboratory.

(3) "Authorized laboratory" means a laboratory that meets the requirements of the United States Department of Agriculture, Animal and Plant Health Inspection Service and is thus qualified to perform testing required to determine classification of poultry and to test for avian pathogens.

(4) "Authorized testing agent" means a person designated to collect official samples for submission to an authorized laboratory and to perform the stained antigen, rapid whole blood test for pullorum-typhoid.

(5) "Avian influenza" means an infection or disease of poultry caused by viruses in the family Orthomyxoviridae, genus Influenzavirus A.

(6) "Baby poultry" means newly hatched poultry (chicks, poults, ducklings, goslings, keets, etc.).

(7) "Dealer" means an individual or business that deals in commerce in hatching eggs, newly-hatched poultry, and started poultry obtained from breeding flocks and hatcheries.

(8) "Department" means the Utah Department of Agriculture and Food.

(9) "Exposed (Exposure)" mean contact with birds, equipment, personnel, supplies, or any article infected with, or contaminated by, communicable poultry disease organisms.

(10) "Flock" means all of the poultry on one farm.

(11) "Flock-based number system" means a flock-based number system which combines a flock identification number (FIN) with a producer's unique livestock production numbering system to provide a nationally unique identification number for an animal.

(12) "Flock identification number (FIN)" means a nationally unique number assigned by a State, Tribal, or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership.

(13) "Fowl typhoid or typhoid" means a disease of poultry caused by Salmonella Gallinarum.

(14) "Group/lot identification number (GIN)" means a identification number used to uniquely identify a "unit of animals" of the same species that is managed together as one group throughout the preharvest production chain.

(15) "Hatchery" means hatchery equipment on one premises operated or controlled by any person for the production of baby poultry.

(16) "Infected flock' means a flock in which an authorized laboratory has discovered one or more birds infected with a communicable poultry disease.

(17) "License" means a license issued by the Department to individuals that sell hatching eggs or poultry.

(18) "Live bird market" means a temporary facility or site that receives live poultry to be resold or slaughtered and sold on-site, not including any producer or grower that prior to the sale of his own birds slaughters or processes them on-site or at an approved slaughter facility or any producer or grower that sells live birds grown exclusively on his premises.

(19) "Multiplier breeding flock" means a flock that is intended for the production of hatching eggs used for the purpose of producing progeny for commercial egg or meat production or for other nonbreeding purposes.

(20) "National Poultry Improvement Plan (NPIP)" means a cooperative industry, state, and federal program through which new diagnostic technology can be effectively applied to the improvement of poultry and poultry products.

(21) "Person" means an individual, association, partnership, government agency, or corporation, or any agent of the foregoing.

(22) "Poultry" means domesticated fowl, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, game birds, doves and pigeons, which are bred for the primary purposes of producing eggs or meat or for exhibition or sport.

(23) "Premises identification number (PIN)" means a nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority a geographically distinct location from other premises.

(24) "Primary breeding flock" means a flock composed of one or more generations that is maintained for the purpose of establishing, continuing, or improving parent lines.

(25) "Public exhibition" means a public show of poultry.

(26) "Pullorum" mean a disease of poultry caused by Salmonella Pullorum.

(27) "Reactor" means a bird that has a positive reaction to a test for any poultry disease.

(28) "Sanitize" means to treat with a product which is registered by the Environmental Protection Agency as germicidal, fungicidal, pseudomonocidal, or tuberculocidal, in accordance with the specifications for use as shown on the label of each product.

(29) "Started poultry" means young poultry (chicks, pullets, cockerels, capons, poults, ducklings, goslings, keets, etc.) that have been fed and watered and are less than 6 months of age.

(30) "State Inspector" means any person employed or authorized to perform functions under the National Poultry Improvement Plan.

(31) "Stock" means a term used to identify the progeny of a specific breeding combination within a species of poultry. These breeding combinations may include pure strains, strain crosses, breed crosses, or combinations thereof.

(32) "Strain" means poultry breeding stock bearing a given name produced by a breeder through at least five generations of closed flock breeding.

(33) "Succeeding flock" means a flock brought onto a premises during the 12 months following removal of an infected flock.

(34) "Suspect flock" means a flock that has been exposed to a communicable poultry disease.

R58-6-3. Importation of Poultry or Hatching Eggs.

(1) All poultry and hatching eggs being imported into Utah must meet the following requirements:

(a) All poultry and hatching eggs must have an import permit from the Department.

(b) All poultry and hatching eggs entering Utah must have a Certificate of Veterinary Inspection or a National Poultry Improvement Plan Certificate.

(c) All poultry and hatching eggs shall originate from flocks or hatcheries that have a Pullorum-Typhoid Clean rating given by the official state agency of the National Poultry Improvement Plan (NPIP) of the state, or

(d) All poultry entering Utah from a flock or hatchery which does not have a clean rating through NPIP certification must have been tested negative for pullorum-typhoid within the last 30 days.

(2) All poultry being imported into Utah must be officially identified with one of the following:

(a) A sealed and numbered band which has the flock-based number system printed on the band; or

(b) The birds are moved under a Group/lot identification number (GIN).

R58-6-4. Quarantine of Diseased Poultry.

(1) The Commissioner of Agriculture or his designated agent may quarantine diseased poultry, whenever any infectious or contagious diseases have been identified.

(2) The quarantine notice shall be posted in a conspicuous place on the outside of the coops and premises.

(3) The coops and surroundings must be maintained in a sanitary condition.

(4) No live poultry shall under any circumstances be removed from the quarantined coop or premises, except under permit from the Department.

(5) All dead birds shall be destroyed by burning or by being placed in a pit properly constructed for disposal of dead birds.

(6) The attendant shall wear rubber footwear which shall be disinfected in a disinfectant recognized by U.S. Department of Agriculture each time before leaving the infected coops.

(7) All crates, utensils or other paraphernalia used around the infected coops shall be thoroughly cleaned and disinfected before being removed from the infected premises; except egg cases and those are to be handled in such manner as may be designated by the attending veterinarian.

(8) Truck drivers are forbidden to enter quarantined premises personally or with trucks.

(9) No unauthorized visitors will be allowed on infected premises.

(10) All droppings and litter shall be buried or burned or thoroughly disinfected before being removed from the premises.

(11) Vaccination shall be done by or under the direction of an accredited veterinarian only.

(12) The quarantine shall be in effect until withdrawn by the Commissioner of Agriculture or his designated agent.

R58-6-5. Poultry Dealer License.

(1) No dealer may sell baby or started poultry at a fixed location or via the internet unless they are first licensed by the Department.

(2) A poultry dealer does not hatch or sell eggs.

(3) Individuals selling less than 20 birds a year are exempt from licensure.

(4) Each location in which poultry are sold from must be licensed separately on an annual basis.

(5) Any person desiring a license to sell baby or started poultry shall apply to Department.

(a) Such application for a license will be made on a department form for a Poultry Dealer License.

(b) The number of birds sold the previous year at that location must be recorded on the form.

(c) A fee based on the approved Department fee schedule must be paid prior to license issuance.

(6) Licensees must keep records for the calendar year of where poultry were purchased.

(7) The area where the poultry are kept should be clean and appropriate for the type and age of the poultry.

(8) Poultry care and handling should conform to recognized husbandry practices.

(9) All individuals purchasing poultry should receive written information on handling poultry safely to prevent human illness.

(10) If poultry are housed in a public area, there must be signage that provides information on handling poultry safely to prevent human illness and hand cleaning materials must be provided.

R58-6-6. Hatchery License.

(1) No person may hatch or sell hatching eggs as well as sell baby or started poultry unless they are first licensed with the Department, unless, hatching eggs are for personal use only.

(2) Any person desiring a license to hatch or sell hatching eggs as well as sell baby or started poultry shall apply to Department.

(a) Such application for a license will be made on a department form for a Hatchery License.

(b) The number of eggs and birds sold the previous year at that location must be recorded on the form.

(c) A fee based on the approved Department fee schedule must be paid prior to license issuance.

(3) Licensees must keep records for the calendar year of whom the eggs or birds were sold to.

(a) Name, physical address, and telephone number as well as number and types of eggs or poultry purchased should be kept for each purchase.

(4) The area where the poultry are kept should be clean and appropriate for the type and age of the poultry.

(5) Poultry care and handling should conform to recognized husbandry practices.

(6) All individuals purchasing eggs or poultry should receive written information on the handling of poultry safely to prevent human illness.

R58-6-7. Release of Gamebirds and Prohibition of Live Bird Markets.

(1) No person may release gamebirds into the wild unless the birds originate from a NPIP Pullorum-Typhoid Clean facility or are tested negative for pullorum-typhoid.

(2) Live bird markets are prohibited in the State of Utah to reduce the spread of avian diseases in the state.

R58-6-8. National Poultry Improvement Plan.

(1) Participation

(a) Any person producing or dealing in products may participate in the Plan when they have demonstrated, to the satisfaction of the Department, that their facilities, personnel, and practices are adequate for carrying out the applicable provisions of the Plan, and have signed an agreement with the Department to comply with the general and the applicable specific provisions of the Plan and any regulations of the Department.

(b) A participant in the plan shall participate with all of their poultry hatching egg supply flocks and hatchery operations.

(c) They shall report to the Official State Agency on VS Form 9-2 or through other appropriate means each breeding flock before the birds reach 24 weeks of age or, in the case of ostriches, emus, rheas, cassowaries, before the birds reach 20 months of age. This report will include:

(i) Name and address of flockowner;

(ii) Flock location and designation;

(iii) Type: Primary or Multiplier;

(iv) Breed, variety, strain, or trade name of stock;

(v) Source of males;

(vi) Source of females;

(vii) Number of birds in the flock; and

(viii) Intended classification of flock.

(d) No person shall be compelled by the Department to qualify products for any of the other classifications as a condition of qualification for the U.S. Pullorum-Typhoid Clean classification.

(e) Participation in the Plan shall entitle the participant to use the Plan emblem.

(2) General provisions for all participants.

(a) Records of purchases and sales and the identity of products handled shall be maintained in a manner satisfactory to the Department.

(b) Products, records of sales and purchase of products, and material used to advertise products shall be subject to inspection by the Department at any time.

(c) Except as provided by this paragraph, participants in the Plan may not buy or receive products for any purpose from nonparticipants unless they are part of an equivalent program, as determined by the Department.

(d) Participants in the Plan may buy or receive products from flocks that are neither participants nor part of an equivalent program, for use in breeding flocks or for experimental purposes, under the following conditions only:

(i) With the permission of the Department and the concurrence of the USDA; and

(ii) By segregation of all birds before introduction into the breeding flock.

(iii) Upon reaching sexual maturity, the segregated birds must be tested and found negative for pullorum-typhoid. The Department may require a second test at its discretion.

(e) Each participant shall be assigned a permanent approval number by the USDA.

(i) This number, prefaced by the numerical code of the State, will be the official approval number of the participant and may be used on each certificate, invoice, shipping label, or other document used by the participant in the sale of his products.

(ii) The approval number shall be withdrawn when the participant no longer qualifies for participation in the Plan.

(3) Specific provisions for participating flocks.

(a) Poultry equipment, and poultry houses and the land in the immediate vicinity thereof, shall be kept in sanitary condition.

(b) The participating flock, its eggs, and all equipment used in connection with the flock shall be separated from nonparticipating flocks, in a manner acceptable to the Department.

(c) All flocks shall consist of healthy, normal individuals characteristic of the breed, variety, cross, or other combination which they are stated to represent.

(d) A flock shall be deemed to be a participating flock at any time only if it has qualified for the U.S. Pullorum-Typhoid Clean classification.

(e) Each bird shall be identified with a sealed and numbered band obtained through or approved by the Department.

(4) Specific provisions for participating hatcheries.

(a) Hatcheries must be kept in sanitary condition, acceptable to the Department. The minimum requirements with respect to sanitation include the following:

(i) Egg room walls, ceilings, floors, air filters, drains, and humidifiers should be cleaned and disinfected at least two times per week.

(ii) Incubator room walls, ceilings, floors, doors, fan grills, vents, and ducts should be cleaned and disinfected after each set or transfer.

(iii) Incubator rooms should not be used for storage.

(iv) Egg trays and buggies should be cleaned and disinfected after each transfer.

(v) Hatcher walls, ceilings, floors, doors, fans, vents, and ducts should be cleaned and disinfected after each hatch.

(vi) Hatcher rooms should be cleaned and disinfected after each hatch and should not be used for storage.

(vii) Chick/poult processing equipment and rooms should be thoroughly cleaned and disinfected after each hatch.

(viii) Chick/poult boxes should be cleaned and disinfected before being reused.

(ix) Vaccination equipment should be cleaned and disinfected after each use.

(x) Hatchery residue, such as chick/poult down, eggshells, infertile eggs, and dead germs, should be disposed of promptly and in a manner satisfactory to the Department.

(xi) The entire hatchery should be kept in a neat, orderly condition and cleaned and disinfected after each hatch.

(xii) Effective insect and rodent control programs should be implemented.

(b) A hatchery that keeps started poultry must keep such poultry separated from the incubator room in a manner satisfactory to the Department.

(c) All baby and started poultry offered for sale under Plan terminology should be normal and typical of the breed, variety, cross, or other combination represented.

(d) Eggs incubated should be sound in shell, typical for the breed, variety, strain, or cross thereof and reasonably uniform in shape.

(e) Hatching eggs should be trayed and the baby poultry boxed with a view to uniformity of size.

(f) Any nutritive material provided to baby poultry must be free of the avian pathogens.

(g) If a person is responsibly connected with more than one hatchery, all of such hatcheries must participate in the Plan if any of them participate. A person is deemed to be responsibly connected with a hatchery if he or she is a partner, officer, director, holder, owner of 10 percent or more of the voting stock, or an employee in a managerial or executive capacity.

(5) Specific provisions for participating dealers.

(a) Dealers in poultry breeding stock, hatching eggs, or baby or started poultry shall comply with all provisions in this section which apply to their operations.

(6) Terminology and classification; general.

(a) The official classification terms and the various designs illustrative of the official classifications may be used only by participants and to describe products that have met all the specific requirements of such classifications.

(b) Products produced under the Plan shall lose their identity under Plan terminology when they are purchased for resale by or consigned to nonparticipants.

(c) Participating flocks, their eggs, and the baby and started poultry produced from them may be designated by their strain or trade name.

(d) When a breeder's trade name or strain designation is used, the participant shall be able by records to substantiate that the products so designated are from flocks that are composed of either birds hatched from eggs produced under the direct supervision of the breeder of such strain, or stock multiplied by persons designated and so reported by the breeder to the Department.

(7) Terminology and classification; hatcheries and dealers.

(a) Participating hatcheries and dealers shall be designated as "National Plan Hatchery" and "National Plan Dealer", respectively.

(b) The Department shall be notified by the USDA of additions, withdrawals, and changes in classification.

(8) Terminology and classification; flocks and products.

(a) Participating flocks, products produced from them that have met the requirements of a classification in this part may be designated as:

(i) U.S. Pullorum-Typhoid Clean,
(ii) U.S. M. Gallisepticum Clean,
(iii) U.S. Sanitation Monitored,
(iv) U.S. M. Synoviae Clean,
(v) U.S. M. Meleagridis Clean,
(vi) U.S. Sanitation Monitored, Turkeys,
(vii) U.S. S. Enteritidis Clean,
(viii) U.S. Salmonella Monitored,
(ix) U.S. M. Gallisepticum Monitored,
(x) U.S. M. Synoviae Monitored,
(xi) U.S. Avian Influenza Clean, or

(xii) U.S. H5/H7 Avian Influenza Clean.

(9) Supervision.

(a) The Department may designate qualified persons as Authorized Agents to do the sample collecting provided for in this section and may designate qualified persons as Authorized Testing Agents to do the sample collecting and blood testing provided for in this section.

(b) The Department shall employ or authorize qualified persons as State Inspectors to perform the qualification testing of participating flocks, and to perform the official inspections necessary to verify compliance with the requirements of the Plan.

(c) Authorities issued under the provisions of this section shall be subject to cancellation by the Department on the grounds of incompetence or failure to comply with the provisions of the Plan or regulations of the official State agency.

(i) Such actions shall not be taken until a thorough investigation has been made by the Department and the authorized person has been given notice of the proposed action and the basis therefore and an opportunity to present his views.

(10) Inspections.

(a) Each participating hatchery shall be audited at least one time annually or a sufficient number of times each year to satisfy the Department that the operations of the hatchery are in compliance with the provisions of the Plan.

(b) The records of all flocks maintained primarily for production of hatching eggs shall be examined annually by a State Inspector.

(i) Records shall include:

(A) VS Form 9-2, "Flock Selecting and Testing Report";

(B) VS Form 9-3, "Report of Sales of Hatching Eggs, Chicks, and Poults";

(C) set and hatch records;

(D) egg receipts; and

(E) egg/chick orders or invoices.

(ii) Records shall be maintained for 3 years.

(iii) On-site inspections of flocks and premises will be conducted if the State Inspector determines that a breach of sanitation, blood testing, or other provisions has occurred for Plan programs for which the flocks have or are being qualified.

(11) Debarment from participation.

(a) Participants in the Plan, who after investigation by the Department or its representative, are notified in writing of their apparent noncompliance with the Plan provisions or regulations of the Department, shall be afforded a reasonable time, as specified by the Department, within which to demonstrate or achieve compliance.

(b) If compliance is not demonstrated or achieved within the specified time, the Department may debar the participant from further participation in the Plan for such period, or indefinitely, as the Department may deem appropriate.

(c) The debarred participant shall be afforded notice of the bases for the debarment and opportunity to present their views with respect to the debarment in accordance with procedures adopted by the Department.

(d) The Department shall thereupon decide whether the debarment order shall continue in effect.

(e) Such decision shall be final unless the debarred participant, within 30 days after the issuance of the debarment order, requests the Administrator to determine the eligibility of the debarred participant for participation in the Plan.

(i) In such event the Administrator shall determine the matter de novo in accordance with the rules of practice in 7 CFR part 50, which are hereby made applicable to proceedings before the Administrator under this section.

(ii) The definitions in 7 CFR 50.10 and the following definitions shall apply with respect to terms used in such rules of practice.

(12) Testing.

(a) Poultry must be more than 4 months of age when tested for an official classification except,

(i) That turkey candidates may be tested at more than 12 weeks of age;

(ii) That game bird candidates may be tested when more than 4 months of age or upon reaching sexual maturity, whichever comes first;

(iii) That ostrich, emu, rhea, and cassowary candidates may be tested when more than 12 months of age.

(b) Samples for official tests shall be collected by an Authorized Agent, Authorized Testing Agent, or State Inspector and tested by an authorized laboratory, except that the stained antigen, rapid whole-blood test for pullorum-typhoid may be conducted by an Authorized Testing Agent or State Inspector.

(c) For Plan programs in which a representative sample may be tested in lieu of an entire flock, except the ostrich, emu, rhea, and cassowary program, the minimum number tested shall be 30 birds per house, with at least 1 bird taken from each pen and unit in the house. The ratio of male to female birds in representative samples of birds from meat-type chicken, waterfowl, exhibition poultry, and game bird flocks must be the same as the ratio of male to female birds in the flock. In houses containing fewer than 30 birds other than ostriches, emus, rheas, and cassowaries, all birds in the house must be tested.

(d) The Department adopts all sampling and testing procedures specified in Title 9 CFR 145-147 (2013) which incorporated by reference.

KEY: disease control, NPIP, hatchery, poultry
March 25, 2013 **4-31-119**
Notice of Continuation January 12, 2017

R58. Agriculture and Food, Animal Industry.
R58-11. Slaughter of Livestock and Poultry.
R58-11-1. Authority.

Promulgated under authority of Section 4-32-8.

R58-11-2. Definitions.

(1) "Adulterated" means as defined in Section 4-32-3(1).

(2) "Bill of Sale for Hides" means a hide release or some other formal means of transferring the title of hides.

(3) "Business" means an individual or organization receiving remuneration for services.

(4) "Commissioner" means the Commissioner of Agriculture or his representative.

(5) "Custom Slaughter-Release Permit" means a permit that will serve as a brand inspection certificate and will allow animal owners to have their animals farm custom slaughtered.

(6) "Department" means the Utah Department of Agriculture and Food.

(7) "Detain or Embargo" means the holding of a food or food product for legal verification of adulteration, misbranding or proof of ownership.

(8) "Emergency Slaughter" means for the purpose of this chapter that Emergency Slaughter is no longer allowed for non-ambulatory injured cattle. Non-ambulatory disabled cattle that cannot rise from a recumbent position or cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions, are not allowed to be slaughtered for food.

(9) "Farm Custom Slaughtering" means the slaughtering, skinning and preparing of livestock and poultry by humane means for the purpose of human consumption which is done at a place other than a licensed slaughtering house by a person who is not the owner of the animal.

(10) "Food" means a product intended for human consumption.

(11) "Immediate Family" means persons living together in a single dwelling unit and/or their sons and daughters.

(12) "License" means a license issued by the Utah Department of Agriculture and Food to allow farm custom slaughtering.

(13) "Licensee" means a person who possesses a valid farm custom slaughtering license.

(14) "Misbranded" means as defined in Section 4-32-3(27).

(15) "Owner" means a person holding legal title to the animal.

(16) "Sanitary Standards, Practices",

(a) Sanitary operating conditions: All food-contact surfaces and non-food-contact surfaces of an exempt facility are cleaned and sanitized as frequently as necessary to prevent the creation of insanitary conditions and the adulteration of product. Cleaning compounds, sanitizing agents, processing aids, and other chemicals used by an exempt facility are safe and effective under the conditions of use. Such chemicals are used, handled, and stored in a manner that will not adulterate product or create insanitary conditions. Documentation substantiating the safety of a chemical's use in a food processing environment are available to inspection program employees for review. Product is protected from adulteration during processing, handling, storage, loading, and unloading and during transportation from exempt establishments.

(b) Grounds and pest control: The grounds of exempt operation are maintained to prevent conditions that could lead to insanitary conditions or adulteration of product. Plant operators have in place a pest management program to prevent the harborage and breeding of pests on the grounds and within the facilities. The operator's pest control operation is capable of preventing product adulteration. Management makes every effort to prevent entry of rodents, insects, or animals into areas where products are handled, processed, or stored. Openings (doors and windows) leading to the outside or to areas holding inedible product have effective closures and completely fill the openings. Areas inside and outside the facility are maintained to prevent harborage of rodents and insects. The pest control substances used are safe and effective under the conditions of use and are not applied or stored in a manner that will result in the adulteration of product or the creation of insanitary conditions.

(c) Sewage and waste disposal: Sewage and waste disposal systems properly remove sewage and waste materials--feces, feathers, trash, garbage, and paper--from the facility. Sewage is disposed of into a sewage system separate from all other drainage lines or disposed of through other means sufficient to prevent backup of sewage into areas where product is processed, handled, or stored. When the sewage disposal system is a private system requiring approval by a State or local health authority, upon request, the management must furnish to the inspector a letter of approval from that authority.

(d) Water supply and water, ice, and solution reuse: A supply of running water that complies with the National Primary Drinking Water regulations (40 CFR part 141) at a suitable temperature and under pressure as needed, is provided in all areas where required (for processing product; for cleaning rooms and equipment, utensils, and packaging materials; for employee sanitary facilities, etc.). If a facility uses a municipal water supply, it must make available to the inspector, upon request, a water report, issued under the authority of the State or local health agency, certifying or attesting to the potability of the water supply. If a facility uses a private well for its water supply, it must make available to the inspector, upon request, documentation certifying the potability of the water supply that has been renewed at least semi-annually.

(e) Facilities: Maintenance of facilities during slaughtering and processing is accomplished in a manner to ensure the production of wholesome, unadulterated product.

(f) Dressing rooms, lavatories, and toilets: Dressing rooms, toilet rooms, and urinals are sufficient in number ample in size, conveniently located, and maintained in a sanitary condition and in good repair at all times to ensure cleanliness of all persons handling any product. Dressing rooms, lavatories, and toilets are separate from the rooms and compartments in which products are processed, stored, or handled.

(g) Inedible Material Control: The operator handles and maintains inedible material in a manner that prevents the diversion of inedible animal products into human food channels and prevents the adulteration of human food.

(17) Commerce: Means the exchange transportation of poultry product between states, U.S. territories (Guam, Virgin Islands of the United States, and American Samoa), and the District of Columbia.

R58-11-3. Registration and License Issuance.

(1) Farm Custom Slaughtering License.

(a) Any person or person desiring to do farm custom slaughtering shall apply to the Department. Such application for a license will be made on a department form for a Farm Custom Slaughter License. The form shall show the name, address and telephone number of the owner, the name, address and telephone number of the operator if it is different than the owner, a brief description of the vehicle and the license number. Licenses will be valid for the calendar year (January 1 to December 31). Each licensee will be required to re-apply for a license every calendar year. Change of ownership or change of vehicle license will require a new application to be filed with the Department.

(b) Registration will not be recognized as complete until the applicant has demonstrated his ability to slaughter and has

completed and signed the registration form.

(c) A fee must be paid prior to license issuance.

R58-11-4. Equipment and Sanitation Requirements.

(1) Unit of vehicle and equipment used for farm custom slaughtering:

(a) The unit or vehicle used for farm custom slaughtering shall be so constructed as to permit maintenance in a clean, sanitary manner.

(b) A tripod or rail capable of lifting a carcass to a height which enables the carcass to clear the ground for bleeding and evisceration must be incorporated into the unit or vehicle. Hooks, gambles, or racks used to hoist and eviscerate animals shall be of easily cleanable metal construction.

(c) Knives, scabbards, saws, etc. shall be of rust resistant metal or other impervious easily cleanable material.

(i) A clean dust proof container shall be used to transport and store all instruments and utensils used in slaughtering animals.

(d) A water tank shall be an integral part of the unit or vehicle. It shall be of approved construction with a minimum capacity of 40 gallons. Water systems must be maintained in a sanitary manner and only potable water shall be used.

(e) A tank (for sanitizing) large enough to allow complete emersion of tools used for slaughtering must be filled during slaughter operations with potable water and maintained at a temperature of at least 180 degrees Fahrenheit. In lieu of 180 degrees Fahrenheit water, chemical sterilization may be used with an approved chemical agent after equipment has been thoroughly cleaned. Chloramine, hypochloride, and quaternary ammonium compounds or other approved chemical compounds may be used for this purpose and a concentration must be maintained at sufficient levels to disinfect utensils. Hot water, cleaning agents, and disinfectant shall be available at all times if chemicals are used in lieu of 180 degrees Fahrenheit water.

(f) Cleaning agents and paper towels shall be available so hands and equipment may be cleaned as needed.

(g) Aprons, frocks and other outer clothing worn by persons who handle meat must be clean and of material that is easily cleanable.

(h) All inedible products and offal will be denatured with either an approved denaturing agent or by use of pounch material as a natural denaturing agent.

(i) When a licensee transports uninspected meat to an establishment for processing, he shall:

(i) do so in a manner whereby product will not be adulterated or misbranded, and/or mislabeled; and

(ii) transport the meat in such a way that it is properly protected; and

(iii) deliver carcasses in such a way that they shall be placed under refrigeration within one hour of time of slaughter (40 degrees F).

(j) Sanitation.

(i) Unit or Vehicle.

(A) The unit or vehicle must be thoroughly cleaned after each daily use.

(B) All food-contact and non-food contact surfaces of utensils and equipment must be cleaned and sanitized as necessary to prevent the creation of insanitary conditions and the adulteration of carcasses and parts.

(C) Carcasses must be protected from adulteration during processing, handling, storage, loading, unloading and during transportation to processing establishments.

(ii) Equipment.

(A) All knives, scabbards, saws and all other food contact surfaces shall be cleaned and sanitized prior to slaughter and as needed to prevent adulteration.

(B) Equipment must be cleaned and sanitized after each slaughter and immediately before each slaughter.

(iii) Inedibles.

(A) Inedibles shall be placed in designated containers and be properly denatured, and the inedible containers must be clearly marked (Inedible Not For Human Consumption in letters not less than 4 inches in height).

(B) Containers for inedibles shall be kept clean and properly separated from edible carcasses to prevent adulteration.

(iv) Personal Cleanliness.

(A) Adequate care shall be taken to prevent contamination of the carcasses from fecal material, ingesta, milk, perspiration, hair, cosmetics, medications and similar substances.

(B) Outer clothing worn by permittee shall, while handling exposed carcasses, be clean.

(C) No licensee with a communicable disease or who is a disease carrier or is infected with boils, infected wounds, sores or an acute respiratory infection shall participate in livestock slaughtering.

(D) Hand wash facilities shall be used as needed to maintain good personal hygiene.

R58-11-5. Slaughtering Procedures of Livestock.

(1) Slaughter Area

(a) Slaughtering shall not take place under adverse conditions (such as blowing dirt, dust or in mud).

(b) If a slaughter area is used for repeated kills, the area should be maintained to prevent blood from collecting, running off on to adjacent property, or contaminating water sources.

(c) Hides, viscera, blood, pounch material, and all tissues must be removed and disposed at a rendering facility, landfill, composting or by burial as allowed by law.

(2) Humane Slaughter - Animals shall be rendered insensible to pain by a single blow, or gun shot or electrical shock or other means that is instantaneous and effective before being shackled, hoisted, thrown, cast or cut.

(3) Hoisting and Bleeding - Animals shall be hoisted and bled as soon after stunning as possible to utilize post-stunning heart action and to obtain complete bleeding. Carcasses shall be moved away from the bleeding area for skinning and butchering.

(4) Skinning - Carcass and head skin must be handled without neck tissue contamination. This may be done by leaving the ears on the hide and tying the head skin. Feet must be removed before carcass is otherwise cut. Except for skinning and starting skinning procedures, skin should be cut from inside outward to prevent carcass contamination with cut hair. Hair side of hide should be carefully rolled or reflected away from carcass during skinning. When carcass is moved from skinning bed, caution should be taken to prevent exposed parts from coming in contact with adulterating surfaces.

(5) Evisceration - Before evisceration, rectum shall be tied to include bladder neck and to prevent urine and fecal leakage. Care should also be taken while opening abdominal cavities to prevent carcass and/or viscera contamination.

(6) Carcass washing - Hair, dirt and other accidental contamination should be trimmed prior to washing. Washing should proceed from the carcass top downward to move away any possible contaminants from clean areas.

R58-11-6. Identification and Records.

(1) Livestock Identification - Pursuant to requirements of Section 4-24-13, it shall be unlawful for any license holder to slaughter livestock which do not have a Brand Inspection Certificate or Farm Custom Slaughter Tag filled out at time of slaughter.

(a) Animal owners must have a Brand Inspection Certificate for livestock intended to be farm custom slaughtered, issued by a Department Brand Inspector prior to slaughter, paying the legal brand inspection fee and beef promotion fee. This will be accomplished by the animal owner contacting a Department Brand Inspector and obtaining a Brand Inspection

Certificate (Custom Slaughter-Release Permit).

(b) Animal owners must also obtain farm custom slaughter identification tags from a Department Brand Inspector for a fee of $1 each. These tags will be required on beef, pork, and sheep.

(2) Records.

(a) The Custom Slaughter-Release Permit or Farm Custom Slaughter Tag will record the following information:

(i) An affidavit with a statement that shall read "I hereby certify ownership of this animal to be slaughtered by (name). I fully understand that having my animal farm custom slaughtered means my animal will not receive meat inspection and is for my use, the use of my immediate family, non-paying guests, or full-time employees. The carcass will be stamped "NOT FOR SALE" and will not be sold." This statement must be signed by the owner or designee.

(ii) In addition to this affidavit, the following information will be recorded:

(A) date;

(B) owner's name, address and telephone number;

(C) animal description including brands and marks;

(D) Farm Custom Slaughter tag number.

(b) The Farm Custom Slaughter tag must record the following information:

(i) date;

(ii) owner's name, address and telephone number;

(iii) location of slaughter;

(iv) name of licensee;

(v) licensee permit number; and

(vi) carcass destination.

(c) Prior to slaughter the licensee shall:

(i) Prepare the Farm Custom Slaughter tag with complete and accurate information;

(A) One tag shall stay in the license holder's file for at least one year.

(B) One tag plus a copy of the Farm Custom Slaughter-Release Permit shall be sent into the Department by the 10th of each month for the preceding month's slaughter by the licensee.

(C) After slaughter, all carcasses must be stamped "NOT FOR SALE" on each quarter with letters at least 3/8" in height; further, a Farm Custom Slaughter "NOT FOR SALE" tag must be affixed to each quarter of beef and each half of pork and sheep.

(D) Hide Purchase - Licensee receiving hides for slaughtering services must obtain a copy of the Custom Slaughter-Release Permit to record transfer of ownership as required by Section 4-24-18.

R58-11-7. Poultry Slaughter.

(1) Personal Use Exemption.

(a) A person who raises poultry may slaughter and or process the poultry if:

(i) slaughtering or processing poultry is not prohibited by local ordinance;

(ii) the poultry product derived from the slaughtered poultry is consumed exclusively by the person or the person's immediate family, regular employees of the person, or nonpaying guests;

(iii) the slaughtering and processing of the poultry is performed only by the owner or an employee;

(iv) the poultry is healthy when slaughtered;

(v) the exempt poultry is not sold or donated for use as human food; and

(vi) the immediate containers bear the statement, "NOT FOR SALE".

(2) Farm Custom Slaughter/Processing

(a) A person may slaughter and or process poultry belonging to another person if:

(i) the person holds a valid farm custom slaughter license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the licensee does not engage in the business of buying or selling poultry products capable for use as human food;

(iv) the poultry is healthy when slaughtered;

(v) the slaughtering and or processing is conducted in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(vi) the unit or vehicle used for farm custom slaughtering shall be so constructed as to permit maintenance in a clean and sanitary manner;

(A) the immediate containers bear the following information:

(B) the owner's name and address;

(C) the licensee's name and address, and;

(D) the statement, "NOT FOR SALE".

(3) Producer/Grower 1,000 Bird Limit Exemption

(a) A poultry grower may slaughter no more that 1,000 birds of his or her own raising in a calendar year for distribution as human food if;

(i) the person holds a valid poultry exemption license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the poultry grower does not engage in buying or selling poultry products other than those produced from poultry raised on his or her own farm (includes rented or leased property);

(iv) the slaughtering and or processing are conducted under sanitary standards, practices and procedures according to United State Department of Agriculture (USDA) Food Safety Inspection Service (FSIS) regulations and guidance material capable of producing poultry products that are sound, clean, and fit for human food (not adulterated);

(v) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year,

(vi) The poultry products do not move in commerce. Distribution directly to household consumers, retail establishments, restaurants, hotels, and boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction where it is prepared; and

(vii) the immediate containers bear the following information:

(A) name of product;

(B) ingredients statement (if applicable);

(C) net weights statement;

(D) name and address of processor;

(E) Safe food handling statement;

(F) date of package and/or Lot number, and;

(G) the statement "Exempt R58-11-7(C)".

(4) Producer/Grower 20,000 Bird Limit Exemption

(a) A poultry grower may slaughter no more than 20,000 healthy birds of his or her own raising in a calendar year for distribution as human food if;

(i) the person holds a valid poultry exemption license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the poultry grower does not engage in buying or selling poultry products other than those produced from poultry raised on his or her own farm (includes rented or leased property);

(iv) the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(v) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year,

(vi) The poultry products do not move in commerce. Distribution is directly to household consumers, retail establishments, restaurants, hotels, and boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction where it is prepared; and

(vii) the immediate containers bear the following information:

(A) name of product;

(B) ingredients statement (if applicable);

(C) net weights statement;

(D) name and address of processor;

(E) Safe food handling statement;

(F) date of package and/or Lot number, and;

(G) the statement "Exempt R58-11-7(4)".

(5) Producer/Grower or Other Person Exemption

(a) The term "Producer/Grower or Other Person" in this section means a single entity, which may be:

(i) A poultry grower who slaughters and processes poultry that he or she raised for sale directly to household consumers, restaurants, hotels, and boarding houses to be used in those homes and dining rooms for the preparation of meals served or sold directly to customers.

(ii) A person who purchases live poultry from a grower and then slaughters these poultry and processes such poultry for sale directly to household consumers, restaurants, hotels, and boarding houses to be served in those homes or dining rooms for the preparation of meals sold directly to customers.

(b) A business may slaughter and process poultry under this exemption if;

(i) the person holds a valid poultry exemption license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the producer/grower or other person slaughters for processing and sale directly to household consumers, restaurants, hotels, and boarding houses for use in dining rooms or in the preparation of meals sold directly to customers;

(iv) the producer/grower or other person slaughters no more than 20,000 birds in a calendar year that the producer/grower or other person raised or purchased;

(v) the producer/grower or other person does not engage in the business of buying or selling poultry or poultry products prepared under an other exemptions in the same calendar year he or she claims the Producer/Grower or Other Person Exemption;

(vi) The poultry products do not move in commerce. Distribution is directly to household consumers, restaurants, hotels, and boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction where it is prepared; and

(vii) the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(viii) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year, and;

(ix) the immediate containers bear the following information:

(A) name of product;

(B) ingredients statement (if applicable);

(C) net weights statement;

(D) name and address of processor;

(E) safe food handling statement;

(F) date of package and/or Lot number, and;

(G) the statement "Exempt R58-11-7(5)".

(c) A business preparing poultry product under the Producer/Grower or Other Person Exemption may not slaughter or process poultry owned by another person.

(d) A business preparing poultry products under the Producer/Grower or Other Person Exemption may not sell poultry products to a retail store or other producer/grower.

(6) Small Enterprise Exemption

(a) A business that qualifies for the Small Enterprise Exemption may be:

(i) A producer/grower who raises, slaughters, and dresses poultry for use as human food whose processing of dressed exempt poultry is limited to cutting up;

(A) A business that purchases live poultry that it slaughters and whose processing of the slaughtered poultry is limited to the cutting up; or

(B) A business that purchases dressed poultry, which it distributes as carcasses and whose processing is limited to the cutting up of inspected or exempted poultry products, for distribution for use as human food.

(ii) A business may slaughter, dress, and cut up poultry for distribution as human food if;

(A) the person holds a valid poultry exemption license issued by the department;

(B) slaughtering or processing poultry is not prohibited by local ordinance;

(C) the processing of federal or state inspected or exempt poultry product is limited to the cutting up of carcasses or the business slaughters and dresses or cuts up no more than 20,000 birds in a calendar year;

(D) the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(E) the facility used to slaughter or process poultry is not used to slaughter or process another person's poultry;

(F) the immediate containers bear the following information:

(I) name of product;

(II) ingredients statement (if applicable);

(III) net weights statement;

(IV) name and address of processor;

(V) safe food handling statement;

(VI) date of package and/or Lot number, and;

(VII) the statement "Exempt R58-11-7(6)"

(iii) A business may not cut up and distribute poultry products produced under the Small Enterprise Exemption to a business operating under the following exemptions:

(A) Producer/Grower or PGOP Exemption,

(B) Retail Dealer, or

(C) Retail Store.

R58-11-8. Producer/Growers Sharing a Fixed Facility.

(1) Each producer/grower must comply with all the laws and regulations governing such establishments as set forth in Utah Meat and Poultry and Poultry Products Inspection and Licensing Act, this rule, the United State Department of Agriculture (USDA) Poultry Exemptions and federal regulations that apply.

(2) The poultry producer/ grower shall hold a valid Custom Exempt Meat Establishment License (2202) issued by the department

(a) the individual who hold the 2202 license shall be present when slaughter and rocesing operation are being performed.

(3) The department shall be notified five business days prior to slaughtering and processing. The individual shall provide the department with the following information pertaining to the slaughtering and processing of birds:

(a) the date;

(b) the time; and
(c) the location.
(4) The producer/grower shall:
(a) conduct a pre-operational inspection on all food-contact surfaces;
(b) document the findings of the pre-operational inspection and corrective actions as described in 9 CFR 416.12(a) and 416.15 prior to the commencement of operations;
(c) maintain records for at least one year and have them available for inspection upon request by department officials;
(d) fully label product in accordance with this rule before leaving the facility;
(e) maintain the product temperature at 40 degrees F or less during transport;
(f) keep a written recall plan as described in 9 CFR 418 and have it available upon request by department officials;
(5) Producer/growers shall not process on the same day as any other producer/grower.

R58-11-9. Enforcement Procedures.
(1) Livestock and Poultry Slaughtering License:
(a) It shall be unlawful for any person to slaughter or assist in slaughtering livestock and poultry as a business outside of a licensed slaughterhouse unless he holds a valid Farm Custom Slaughtering License issued to him by the Department.
(b) Only persons who comply with the Utah Meat and Poultry Products Inspection and Licensing Act and Rules pursuant thereto, and the Utah Livestock Brand and Anti-Theft Act shall be entitled to receive and retain a license.
(c) License may be renewed annually and shall expire on the 31st of December of each year.
(2) Suspension of license - license may be suspended whenever:
(a) The Department has reason to believe that an eminent public health hazard exists;
(b) Insanitary conditions are such that carcasses would be rendered adulterated and or contaminated.
(c) The license holder has interfered with the Department in the performance of its duties;
(d) The licensee violates the Utah Meat and Poultry Products Inspection and Licensing Act or the Utah Livestock Brand and Anti-Theft Act or rules pursuant to these acts.
(3) The department may, in accordance with the 9 CFR Part 500 suspend or terminate any exemption with respect to any person whenever the department finds that such action will aid in effectuating the purposes of the Act. Failure to comply with the conditions of the exemption including but not limited to failure to process poultry and poultry products under clean and sanitary condition s may result in termination of an exemption, in addition to other Penalties consistent with 9 CFR 318.13
(4) Warning letter - In instances where a violation may have occurred a warning letter may be sent to the licensee which specifies the violations and affords the holder a reasonable opportunity to correct them.
(5) Hearings - Whenever a licensee has been given notice by the Department that suspected violations may have occurred or when a license is suspended he may have an opportunity for a hearing to state his views before the Department.
(6) Reinstatement of Suspended Permit - Any person whose license has been suspended may make application for the purpose of reinstatement of the license. The Department may then re-evaluate the applicant and conditions; if the applicant has demonstrated to the Department that he will comply with the rules, the license may be reinstated.
(7) Detainment or Embargo - Any meat found in a food establishment which does not have the proper identification or any uninspected meat slaughtered by a licensee which does not meet the requirements of these rules may be detained or embargoed.
(8) Condemnation - Meat which is determined to be unfit for human consumption may be denatured or destroyed.

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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 positve 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 co-mingle 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 4-39-106
Notice of Continuation January 12, 2017

R58. Agriculture and Food, Animal Industry.
R58-19. Compliance Procedures.
R58-19-1. Authority.

This rule is promulgated by the Division of Animal Industry (Division), within the Department of Agriculture and Food (Department) under authority of Section 4-2-2(1)(j).

R58-19-2. Definition of Terms.

(1) An Emergency Order means a written action by the Division, which is issued to a person, as a result of information that is known by the Division, which identifies an immediate and significant danger to the public's health, animal health, safety or welfare, and warrants prompt action pursuant to Section 63G-4-502.

Emergency orders include: "quarantine", "seized", "Utah Inspection and Condemned", "sealed", "reject", "retain", "denatured", "detained", and "suspect", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-32-7, 4-32-16, 4-32-17, 4-31-17, 4-39-107, and 9 CFR-III 303.1 through 381.207.

(2) A Citation means a lawful notice, issued by the division, which is intended to immediately remedy a violation of agricultural statutes or rules by a person, business, operator, etc. Pursuant to Section 4-2-15, a citation may include a penalty assessment, or provide for a fine to take effect within a stated time period.

R58-19-3. Emergency Order.

(1) The Division may issue an emergency order when it determines that there is an immediate and significant danger to public health, animal health, safety or welfare may be issued to secure the well-being, safety, or removal of danger to state citizens.

(2) Orders are intended to protect the public from unlawful agricultural and food products and services.

(3) When an emergency order is justified, and conditions warrant immediate action by the Division, it shall:

(a) Promptly issue a written order that includes the following information:

(i) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(ii) a brief statement of findings of fact as determined by the division,

(iii) references to statutes or administrative rules violated,

(iv) the reasons for issuance of the emergency order,

(v) the signature of the agency representative, and

(vi) a space/line for the signature of the person (a signature is not required if the person refuses).

(4) This order shall be written and no product, condition, or service subject to the order shall be released, except upon the subsequent written release by the department.

R58-19-4. Citation.

(1) The Commissioner or persons designated by the Commissioner, may enforce this rule by the issuance of a citation for violation, in order to secure subsequent payments of fines or the imposition of penalties:

(a) The citation will include the following information:

(i) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(ii) references to the statutes or rules violated,

(iii) a brief statement to the findings of fact as determined by the division,

(iv) a penalty or fine amount,

(v) the signature of the agency representative,

(vi) a space or line for the signature of the person (a signature is not required if the person refuses),

(vii) a statement to the effect that a person is allowed to request an administrative hearing if the person feels that a citation was not warranted.

(2) Fine or penalty amounts will be set by the Department or the Division, under the direction of the Commissioner, for amounts up to $5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor.

(3) In accordance with Section 4-2-15, fine or penalty amounts shall be determined according to the approved Department fee schedule.

R58-19-5. Request for Hearing.

When any order or citation, as defined above, is issued, the person being charged with the violation may elect to file, within allowable time limits, a request for the Department to schedule an informal Administrative Hearing in accordance with the provisions of Section 4-1-3.5.

KEY: agricultural law
March 25, 2013 4-2-2(1)(j)
Notice of Continuation January 18, 2017

R58. Agriculture and Food, Animal Industry.
R58-22. Equine Infectious Anemia (EIA).
R58-22-1. Authority.

Promulgated under authority of 4-31, 4-2-2(1)(c), and 4-2-2(1)(i).

The intent of these rules is to eliminate or reduce the spread of Equine Infectious Anemia among equines by providing for a protocol for testing and handling of equines infected and exposed to Equine Infectious Anemia.

R58-22-2. Definitions.

Accredited Veterinarian - means a veterinarian approved by the Deputy Administrator of USDA, APHIS, VS in accordance with provisions of 9 CFR Part 161.

Coggins test - means a common name for the Agar Gel Immuno-diffusion (AGID) test for diagnosis of EIA.

Equine - means any animal in the family Equidae, including horses, asses, mules, ponies, and Zebras.

Equine Infectious Anemia (EIA) - means an infectious disease of equines caused by a lentivirus, equine infectious anemia virus (EIAV). The disease is characterized by three distinct clinical forms: acute, chronic and inapparent.

Identification - means permanent notation of equines that are determined to be EIA reactors by application of a hot iron, or freeze marking using the National Uniform Tag code number for the State of Utah (87), followed by the letter "A" on the left side of the neck or left shoulder.

Official test - means any test for the laboratory diagnosis of EIA that utilizes a diagnostic product that is (1) produced under license from the Secretary of Agriculture, and found to be efficacious for that diagnosis, under the Virus-Serum- Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 et seq.); and (2) conducted in a laboratory approved by the Administrator of APHIS.

Reactor - means any equine that has been subjected to an official laboratory test whose result is positive for EIA.

Exposed Animals - means all equines that have been exposed to EIA by reason of association with the affected animal.

R58-22-3. Equine Infectious Anemia - Rules - Prevention and Control.

The State Veterinarian shall have authority to conduct or supervise testing at an official laboratory to diagnose EIA and to quarantine and order disposition of any individuals or herds that are found to be positive for EIA, at such time as may be deemed necessary for the control and elimination of EIA., as granted under Section 4-31-16.

Personnel authorized to submit samples, approved laboratories, and official tests shall be those identified in the Uniform Methods and Rules, USDA, APHIS 91-55-037 Part II, B, C, and D, effective January 1, 1998, or subsequent revisions.

Procedures for handling equines which are classified as reactors:

Quarantine - When an equine has a positive result on an official test for EIA, the animal shall be placed under quarantine within 24 hours after positive test results are known and a second, confirmatory, test shall be performed under the direction of the state veterinarian. The equine shall remain in quarantine until final classification and disposition is made. Equines which have been located within 200 yards of the infected animal shall be quarantined and tested also.

Repeat testing and removal of reactors - When a reactor is disclosed in a herd, and removed, testing of all exposed equines for EIA must be repeated at no less than 45 day intervals until all remaining equines on the premise test negative, at which time the quarantine may be removed.

Identification of reactor equines - Equines that are determined to be reactors must be permanently identified using the National Uniform Tag code number for Utah (87) followed by the letter "A". Markings must be permanently applied using a hot iron, or freeze marking by an APHIS representative, State representative, or accredited veterinarian. The marking shall be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. Official identification is not necessary if the reactor is moved directly to slaughter under a permit and is in a conveyance sealed with an official seal.

Euthanasia and disposal - Once an equine has been classified as a reactor, it must be removed from the herd. This can be accomplished by euthanasia or removal to slaughter. If slaughter is chosen, the equine must be moved either to a federally or state inspected slaughtering establishment per the Code of Federal Regulations, Part 75.4. If euthanasia is chosen, the animal must be properly buried six feet underground.

R58-22-4. Importation of Equines.

A. Equines imported to Utah shall be in compliance with R58-1-6.

KEY: inspections
August 12, 2015 4-2-2(1)(c)
Notice of Continuation January 12, 2017 4-2-2(1)(j)

R58. Agriculture and Food, Animal Industry.
R58-23. Equine Viral Arteritis (EVA).
R58-23-1. Authority.

Promulgated under authority of Title 4, Subsection 4-2-2(1)(i). It is the intent of this rule to eliminate or reduce the spread of Equine Viral Arteritis among equids by providing for a protocol for handling of equids and semen infected and/or exposed to Equine Arteritis Virus.

R58-23-2. Definitions.

(A) Accredited Veterinarian - means a veterinarian approved by the Deputy Administrator of the United States Department of Agriculture (USDA), Animal Plant Health Inspection Service (APHIS), Veterinary Services (VS) in accordance with provisions of 9 CFR Part 161.

(B) Approved Facility - means a facility that has current written approval from the State Veterinarian to house and/or breed a carrier stallion in the state of Utah.

(C) Approved Laboratory - means a laboratory that has been approved by the State Veterinarian.

(D) Carrier Stallion - means any stallion that tests positive for EAV, but has no proof of a negative semen test.

(E) Equine or Equid - means any animal in the family Equidae, including, but not limited to horses, asses, mules, ponies, and zebras.

(F) Equine Viral Arteritis (EVA) - means an infectious disease of equids caused by Equine Arteritis Virus (EAV). The disease is characterized by abortion in pregnant mares, illness and death in young foals, inflammation of blood vessels resulting in edema and the potential of establishing a carrier state in stallions.

(G) Equine Arteritis Virus (EAV) - means the viral organism that causes Equine Viral Arteritis.

(H) EVA Positive - means an equid who has been identified as having tested positive to EAV.

R58-23-3. Importation of Stallions.

(A) All stallions used for breeding entering Utah shall be tested for Equine Viral Arteritis by an accredited veterinarian within 30 days prior to entry.

(B) Exceptions to the above (R58-23-3(A)) are stallions that have proof of negative EVA status prior to vaccination and proof of subsequent yearly vaccination.

R58-23-4. Importation of EVA Positive Equids and Semen.

(A) All equids imported into Utah shall be in compliance with R58-1-6.

(B) No EVA carrier stallion used for breeding purposes shall be permitted to enter into Utah without a prior permit from the State Veterinarian.

(C) No semen from a carrier stallion shall be permitted to enter into Utah without a prior permit from the State Veterinarian.

(D) All EVA Carrier Stallions, used for breeding purposes, imported into Utah shall be taken directly to an approved facility and shall remain on said facility until permission from the State Veterinarian is obtained to move the animal to another approved facility.

(E) All semen from an EVA Carrier Stallion imported into Utah shall be shipped directly to an approved facility and shall remain on said facility until inseminated, transported to another approved facility and/or disposed of.

R58-23-5. Handling of EVA Positive Equids and Semen.

(A) All stallions used for breeding purposes identified as EVA positive shall have their semen tested by an accredited veterinarian at an approved laboratory prior to breeding of said stallion.

(B) All carrier stallions used for breeding purposes shall be housed and maintained at an approved facility until permission from the State Veterinarian is given to move the stallion to another approved facility.

(C) All EVA infected semen shall only be collected, handled, evaluated, received, packaged and/or administered on an approved facility.

R58-23-6. Requirements for an Approved Facility.

(A) All equids, including but not limited to stallions, mares and geldings, on approved facilities shall be vaccinated for EVA no less than 21 days before the start of breeding season or no less than 21 days before arriving at an approved facility.

(B) Mares being bred to a carrier stallion, or inseminated with semen from a carrier stallion, shall remain on the approved facility for a minimum of 21 days after the initial breeding date.

(C) Adequate biosecurity precautions shall be in place during the breeding season. The adequacy of biosecurity may be monitored periodically by the Utah Department of Agriculture.

R58-23-7. Equine Viral Arteritis is a Reportable Disease.

(A) All EVA positive equids shall be reported to the State Veterinarian by the private veterinary practitioner immediately upon receiving a positive laboratory report on EVA.

(B) All EVA positive test results processed at a state owned laboratory shall be immediately reported to the State Veterinarian.

(C) The State Veterinarian may require testing of any stallion suspected of being exposed to EAV.

KEY: Equine Viral Arteritis (EVA), inspections
February 28, 2007 4-2-2(l)(i)
Notice of Continuation January 12, 2017

R68. Agriculture and Food, Plant Industry.
R68-19. Compliance Procedures.
R68-19-1. Authority.

This rule is promulgated by the Division of Plant Industry (Division), within the Department of Agriculture and Food (Department) under authority of Section 4-2-2(1)(j).

R68-19-2. Definition of Terms.

(A) An Emergency Order means a written action by the division, which is issued to a person, as a result of information that is known by the division, which identifies an immediate and significant danger to the public's health, safety or welfare, and warrants prompt action pursuant to Section 63G-4-502.

Emergency orders include: "stop sale", "stop use", "removal-order", "quarantine ", "regulate-control order", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-11-12, 4-12-7(2), 4-13-8(1), 4-14-8(2), 4-15-11(1), 4-16-8(1), and 4-17-3(8).

(B) A Citation means a lawful notice, issued by the division, which is intended to immediately remedy a violation of agricultural statutes or rules by a person, business, operator, etc. Pursuant to Section 4-2-15, a citation may include a penalty assessment, or provide for a fine to take effect within a stated time period.

R68-19-3. Emergency Order.

The division may issue an emergency order when it determines that there is an immediate and significant danger to public health, safety or welfare , and may be issued to secure the well-being, safety, or removal of danger to state citizens. Orders are intended to protect the public from unlawful agricultural and food products and services.

When an emergency order is justified, and conditions warrant immediate action by the division, it shall: Promptly issue a written order, that includes the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) a brief statement of findings of fact as determined by the division,

(3) references to statutes or administrative rules violated,

(4) the reasons for issuance of the emergency order,

(5) the signature of the agency representative, and

(6) a space/line for the signature of the person (a signature is not required if the person refuses)

The order shall be written and no product, condition, or service subject to the order shall be released, except upon the subsequent written release by the department.

Pursuant to 4-11-11(3), 4-12-7(2), 4-13-8(2), 4-14-8(2), 4-15-8(2) and 4-17-8(2) the person subject to the written order may be required to pay the expense incurred by the department in connection with the withdrawal of the product, condition or service from the market.

R68-19-4. Citation.

The commissioner or persons designated by the commissioner, may enforce this rule by the issuance of a citation for violation, in order to secure subsequent payments of fines or the imposition of penalties:

The citation will include the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) references to the statutes or rules violated,

(3) a brief statement of findings of fact as determined by the division,

(4) a penalty or fine amount

(5) the signature of the agency representative,

(6) a space/line for the signature of the person (a signature is not required if the person refuses)

(7) a statement to the effect that a person is allowed to request an administrative hearing if the person feels that a citation was not warranted.

Fine or penalty amounts will be set by the department or the division, under the direction of the commissioner, for amounts up to $5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor. In accordance with Section 4-2-15, fine or penalty amounts shall be determined according to the following: PENALTY AMOUNTS: Citation per violation up to, but not to exceed $500; if not paid within 15 days, 2 times citation amount; if not paid within 30 days, 4 times citation amount

R68-19-5. Request for Hearing.

When any order or citation, as defined above, is issued, the person being charged with the violation may elect to file, within allowable time limits, a request for the department to schedule an informal Administrative Hearing in accordance with the provisions of Section 4-1-3.5.

KEY: agricultural law
April 15, 1998 4-2-2(1)(j)
Notice of Continuation January 18, 2017

R70. Agriculture and Food, Regulatory Services.
R70-101. Bedding, Upholstered Furniture and Quilted Clothing.
R70-101-1. Authority and Purpose.

Pursuant to Section 4-10-3, this rule establishes the standards, practices and procedures for the manufacture, repair, sale, and distribution of bedding, upholstered furniture, quilted clothing products, and filling materials.

R70-101-2. Definitions.

1) "Clean" means free from stains, dirt, trash, filth, pulp, sludge, oil, grease, fat, skin, epidermis, excreta, vermin, insects, insect eggs, insect carcasses, contamination, hazardous materials, residual or objectionable substances or odors.

2) "Department" means the Utah Department of Agriculture and Food.

3) "Law Label or Label" means a tag attached to a product that provides information about the product to the consumer.

4) "Manufacture" means the making, processing, or preparing of new or secondhand bedding, upholstered furniture, quilted clothing, or filling material.

5) "Manufacturer" means a person who makes or has employees make any bedding, upholstered furniture, quilted clothing, filling material, or any part thereof.

6) "Non-resident" means a person licensed under these rules who does not have premises in the State of Utah.

7) "Person" means an individual, partnership, association, firm, auctioneer, trust, limited liability company, or corporation, and agents, and employees of them.

8) "Premises" means all places where bedding, upholstered furniture, quilted clothing, or filling material is sold, offered for sale, exposed for sale, stored, renovated or manufactured and the delivery vehicles used in their transportation.

9) "Supply dealer" means a person who manufactures, processes, or sells at wholesale any felt, batting, pads, or other filling, loose in bags, in bales or in containers, concealed or not concealed, intended for use in bedding, upholstered furniture, or quilted clothing.

10) "Second Hand Law Tag or Tag" means a tag attached to a product or filling material that has previously been used.

11) "Sterilization Permit Number" means the number issued by a state to be used on filling materials or on the label for bedding, upholstered furniture, or quilted clothing to identify the sterilizing facility, person, or company.

12) "Sterilize" means a process used to make wool, feathers, down, shoddy, or hair free from bacteria or other living microorganisms.

13) "Sterilizer" means a person who sterilizes wool, feathers, down, shoddy, or hair.

14) "Uniform Registry Number or URN" means the number issued by a state to be used on the law label of bedding, furniture, or filling materials to identify the manufacturing facility, person, or company.

R70-101-3. Application of Rule.

1) This rule shall apply to all persons engaged in the business of manufacturing, retailing, wholesaling, processing, repairing, sterilizing, and selling items of bedding, upholstered furniture, quilted clothing and filling materials, regardless of their point of origin.

R70-101-4. Licensing Requirements for Manufacturers, Repairers, and Wholesalers.

1) Any person, who advertises, solicits, or contracts to manufacture or repair bedding, upholstered furniture, quilted clothing, or filling materials shall secure a license from the department.

a) This license must be obtained before such products are offered for sale in Utah.

2) Any person seeking a license shall provide the following to the department:

a) a complete registration application form,

b) a sample of the identification label that will be used, and

c) a sample tag

i) wholesale bedding, upholstered furniture dealers, upholstery supply dealer, and quilted clothing manufacturers are exempted from providing a sample tag to the department.

3) A licensing fee will be assessed annually. This fee shall be paid before January 1 or a late fee will be assessed. All fees are listed in the department's fee schedule approved by the legislature.

R70-101-5. Sterilization Permit Requirements for Sterilizers.

1) Any person, who advertises, solicits, or contracts as a sterilizer shall secure a sterilization permit from the department.

a) This permit must be obtained before such products are offered for sale in Utah.

2) Any person seeking a sterilization permit shall provide to the department a sterilization permit application completed by a department authorized third party inspector.

3) A permit fee will be assessed annually. This fee shall be paid before January 1 or a late fee will be assessed. All fees are listed in the department's fee schedule approved by the legislature.

4) Inspections for sterilization permits shall be conducted every three years

a) Copies of the inspection reports shall be submitted to the department with the renewal form for that year.

R70-101-6. Revocation of License or Permit.

1) The department shall have the authority to suspend or revoke a license or permit for any violation of these provisions.

2) A suspension or revocation shall be in accordance with section 4-1-5.

R70-101-7. Sanitation Requirements.

1) The premises, delivery equipment, machinery, appliances, and devices shall at all times be kept free from refuse, dirt, contamination, or insects.

2) No person shall use in the making, repairing, or renovating of bedding, upholstered furniture, or quilted clothing any filling material that:

a) contains any bugs, vermin or filth,

b) is not clean, or

c) contains burlap or other material that has been used for baling.

3) Bedding, quilted clothing, and filling materials shall be stored four inches off the floor.

4) New and used products shall be stored separately.

R70-101-8. Sterilization Requirements for New Fill Material.

1) All wool, feathers, down, shoddy, and hair shall be cleaned and sterilized before being used as new filling material.

2) Methods for Sterilization

a. Pressure Steam: The material shall be subjected to treatment by steam at 15 PSI (.104 mPA) for 30 minutes or 20 PSI (.0138 mPA) for 20 minutes.

i. The gauge for registering steam pressure must be visible from outside of the room or chamber.

b. Streaming Steam: Two applications of streaming steam maintained for a period of one hour each, applied at intervals of not less than six nor more than 24 hours, may be used.

i. Valved outlets shall be provided near the bottom and the top of the room or chamber when streaming steam is employed.

c. Heat: a teamperature of 235 degrees F held for a period

of 2 hours, within a closed container is considered satisfactory for proper sterilization.

d. Other methods as may be approved by the department upon petition.

R70-101-9. Manufacturing, Wholesale, Sterilizers, and Supply Dealer Labeling Requirements for Quilted Clothing.

1) The department adopts by reference the Rules and Regulations under the Textile Fiber Products Identification Act, Fur Products Labeling Act, and Wool Products Labeling Act found in 16 CFR parts 300, 301, and 303.

2) Articles of plumage-filled clothing shall meet the following label requirements:

a) Any label stating the contents of Down, Goose Down, or Duck Down shall also state the minimum percentage of Down, Goose Down, or Duck Down that is contained in the article. The down label is a qualified general label and shall include in parentheses the minimum percentage of down in the product which must be 75% or greater.

b) Down and Waterfowl Feathers: may be used to designate any plumage product containing between 50% (minimum) and 74% down and plumules. The percentage of both must be stated on the sewn-in label and hang tags,

c) Waterfowl Feathers and Down: may be used to designate any plumage product containing between 5% (minimum) and 49% down and plumules. The percentage of both must be stated on the sewn-in label and hang tags.

d) Waterfowl Feathers: may be used to designate any plumage product containing less than 5% down and plumules.

e) Quill Feathers are not permitted unless disclosed.

f) Other Plumage Products which do not meet the requirements for any of the above listed categories must be labeled accurately with each component listed separately in order of predominance.

3) The sterilization permit number (PER. NO.) shall be listed on the textile label

a) manufacturers of quilted clothing shall have five years compliance period, starting January 1, 2017, for the inclusion of the sterilization permit number on the textile label.

4) The form of identification used on labels and tags shall be the same as those supplied to the department with the registration application.

R70-101-10. Filling Material.

1) All terms and definitions of filling materials shall be those terms which have been submitted and approved by International Association of Bedding Law Officials (IABFLO), except as otherwise required by this rule.

2) All plumage materials shall follow the standards as set forth in the "USA-2000 Labeling Standards- Down and Feather Products" and ASTM D-4522.

3) All other filling materials shall be clean.

4) "Imperfect, irregular foam" means any foam products which show major imperfections or that fall below the foam manufacturer's usual standards or specifications and must be stated on the tag as "imperfect" or "irregular" along with the generic name of the foam.

5) "Imperfect, irregular fibers" shall mean fibers that have imperfections or that fall below the fiber manufacturer's usual standards or specifications and must be stated on the tag as "imperfect" or irregular" along with the generic name of the fiber.

6) The terms "Prime", "Super", "Northern" and similar terms shall not be used unless the fill can be proved to be of superior quality and meet the terms of the qualifying statement.

R70-101-11. Generic Names, Grades, Descriptive Terms, and Definitions of Filling Material.

1) Filling material shall be described on the label and on the tag using the:

a) true generic name,

b) grade,

c) description terms, or

d) definitions of the filling material which have been approved by the department.

2) When more than one kind of filling material is used in a mixture, the percentage by weight shall be listed in order of predominance.

a) Federal fiber tolerance standards are applicable, except as pertains to plumage products.

b) Blends may be described in accordance with section 10 of this rule.

3) When different filling materials are used in various parts of the garment, the areas of the garment shall be named, followed by the name of the filling material used in that area.

R70-101-12. Manufacturer Identification and Law Label Requirements For Bedding and Upholstered Furniture.

1) The form of identification used on labels and tags shall be the same as those supplied to the department with the registration application.

2) For articles of bedding and upholstered furniture, the law label shall use the format adopted by the IABFLO, as listed in the "Manual of Labeling Laws" of the International Sleep Products Association (ISPA). A copy of the current edition of the "Manual of Labeling Laws" is available for public inspection at the Utah Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, Utah.

(3) The law label for newly manufactured products shall meet the following requirements:

a) white on all sides of the label,

b) made of material that cannot be torn,

c) printed in black ink

d) printed in English,

e) printed clearly and legibly, and

f) firmly attached to the article

4) All required information shall be printed on one side of the label with the opposite side remaining blank.

5) Each law label shall state the following:

a) the phrase "UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER" shall appear in bold at the top of the label in capital letters no less than 1/8 inches in height,

b) the phrase "ALL NEW MATERIAL" shall appear in the next section in bold, capital letters no less than 1/8 inch in height, followed by the phrase "CONSISTING OF", no case or height requirements, followed by the filling contents in bold capital letters no less than 1/8 inch in height,

c) the phrase, "Certification is made that the materials in this article are described in accordance with law" shall appear in the next section of the tag,

d) the URN issued by the state in which the firm is first registered shall appear next,

e) the Sterilization Permit Number of the sterilization facility from which the material was obtained, in bold capital letters no less than 1/8 inch in height,

f) the words "CONTENTS STERILIZED" in bold capital letters no less than 1/8 inch in height, and

g) the name and complete address of the manufacturer, importer, or vendor of the article shall appear next.

6) The law label shall be easily accessible to the consumer for examination.

a) Products which are offered for sale in boxes or in some other packaging which make the law labels inaccessible shall reproduce a legible facsimile of the law label on the outer container or covering.

7) No mark, label, printed matter, illustration, sticker, or any other device shall be placed upon the label.

8) The firm's license with the state that issued the URN must be kept current for the number to be valid in the state of Utah.

9) Every firm doing business under more than one state-issued URN or permit shall obtain a license or permit for each number used on products that are offered for sale in Utah.

R70-101-13. Second Hand Law Tags and Tagging Requirements.

1) Tags for second hand materials shall be:

a) a minimum of 2 inches by 3 inches,

b) yellow on both sides of the tag,

c) made of material that cannot be torn,

d) printed in English,

e) printed in black ink,

f) printed clearly and legibly, and

g) firmly attached to the article.

2) All required information shall be printed on one side of the tag with the opposite side remaining blank.

3) Second hand tag shall contain the following information:

a) the phrase "UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER" shall appear in bold at the top of the label in capital letters, no less than 1/8 inch in height,

b) the phrase, "THIS ARTICLE CONTAINS SECOND HAND MATERIAL CONSISTING OF CONTENTS UNKNOWN" shall appear in the next section of the tag. The words "second hand material" and "contents unknown" shall be in capital letters, size not less than 1/8 inches in height,

c) the phrase, "Certification is made that the materials in this article are described in accordance with law" shall appear in the next section of the tag, and

d) the store name and complete corporate address shall appear next.

4) The tag shall be easily accessible to the consumer for examination.

5) No mark, label, printed matter, illustration, sticker, or any other device shall be placed upon the tag.

R70-101-14. Second Hand Tag and Tagging Requirements for Repaired, Reupholstered, and Renovated Products.

1) Tags for repaired, reupholstered, and renovated products shall be:

a) a minimum of 2 inches by 3 inches,

b) yellow on both sides of the tag,

c) made of material that cannot be torn,

d) have the required information printed on one side of the tag with the opposite side remaining blank,

e) printed in English,

f) printed in black ink,

g) printed clearly and legibly, and

h) firmly attached to the article.

2) Second hand tag shall contain the following information:

a) the phrase, "UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER" shall appear in bold at the top of the label in capital letters, no less than 1/8 inch in height,

b) the phrase, "THIS ARTICLE IS NOT FOR SALE OWNER'S MATERIAL" shall appear next in bold in capital letters, no less than 1/8 inch in height,

c) the phrase, "CERTIFICATION IS MADE THAT THIS ARTICLE CONTAINS THE SAME MATERIAL IT DID WHEN RECEIVED FROM THE OWNER AND THAT ADDED MATERIALS ARE DESCRIBED IN THE ACCODANCE WITH LAW, AND CONSIST OF THE FOLLOWING:" followed by a description of the filling materials,

d) a description of the work that was done on the product,

e) the URN number,

f) the name and address of the renovator or repairer, and

g) the date of pick-up, owner's name, and address.

R70-101-15. Used Mattresses.

1) Retailers selling customer returns, refurbished, or used mattresses shall follow the second hand law tag requirements as set out in R70-101-13.

2) In addition, retailers must also display on such mattresses a tag stating "USED" in bold capital letters.

3) The Used tag shall be:

a) a minimum 3 inches by 6 inches,

b) yellow on both sides of the tag,

c) the font shall be a minimum of one inch in height,

d) printed in black ink, and

e) printed in English.

4) All required information shall be printed on one side of the tag with the opposite side remaining blank.

5) The USED tag shall be clearly visible to the consumer at all times.

R70-101-16. Variance.

1) The department may issue variances on labeling and tagging requirements.

2) Requests for a variance must be made to the department in writing and must contain the following information:

a) For what product you are requesting the variance,

b) where you are going to be using the variance,

c) an explanation of the need for a variance,

d) a description of how the variance will be used in practice, and

e) an example of the label or tag that will be used in place of the required label or tag.

3) Approval of variances will be given from the department in writing.

4) All variances shall be subject to a period of review.

R70-101-17. Making or Selling Material or Parts.

1) A person shall not purchase, make, process, prepare, or sell, directly or indirectly, at wholesale or retail, or otherwise, any filling material or other component parts to be used in bedding, upholstered furniture, or quilted clothing, unless such material is appropriately tagged.

R70-101-18. Retailer Responsibilities.

1) Retailers shall:

a) ensure that any article of bedding, upholstered furniture, quilted clothing, or filling material they sell is labeled and tagged correctly,

b) comply with the department's laws and rules governing false and misleading advertisement, and

c) ensure that all manufacturers from whom they purchase products hold a valid license with the department.

2) Retailers shall provide the identity of the manufacturer or wholesaler of any article of bedding, upholstered furniture, quilted clothing, or filling material sold upon request of the department.

3) A retailer may register in lieu of the manufacturer or wholesaler if the manufacturer or wholesaler is not registered.

R70-101-19. Violation of This Rule.

1) Each improperly labeled or tagged article of bedding, upholstered furniture, quilted clothing, or filling material made or sold shall be a separate violation of this rule.

2) No person shall be in violation if he has received, from the person by whom the articles were manufactured or from whom they were received, a guarantee in good faith that the articles are not contrary to the provisions of these rules in the

form prescribed by the Federal Textile Fiber Products Identification Act, Federal Wool Products Labeling Act, and the Federal Trade Commission Rules and Regulations.

3) No person shall remove, or cause to be removed, any tag, or device placed upon any article of bedding, upholstered furniture, quilted clothing, or filling material by an inspector.

4) No person may remove an article that has been condemned and ordered held on inspection notice.

5) No person shall interfere with, obstruct, or hinder any inspector of the department in the performance of their duties.

6) Any article of bedding, upholstered furniture, quilted clothing, or filling material manufactured or wholesaled by the manufacturer or wholesaler who is not registered or permitted may be withheld from sale until the manufacturer or wholesaler registers or obtains a permit.

R70-101-20. Products Not Intended for Use Subject to This Rule.

1) The Commissioner may exclude from this rule textile fiber products which:

a) Have insignificant or inconsequential textile fiber content, or

b) The disclosure of the textile fiber content is not necessary for the protection of the consumer.

KEY: inspections, labeling, quality control, registration
January 26, 2017 4-10-3
Notice of Continuation March 16, 2015

R70. Agriculture and Food, Regulatory Services.
R70-201. Compliance Procedures.
R70-201-1. Authority.

This rule is promulgated by the Division of Regulatory Service (Division), within the Department of Agriculture and Food (Department) under authority of Section 4-2-2(1)(l)(i).

R70-201-2. Definition of Terms.

(A) An Emergency Order means a written action by the Division, which is issued to a person, as a result of information that is known by the Division, which identifies an immediate and significant danger to the public's health, animal health, safety or welfare, and warrants prompt action pursuant to Section 63G-4-502.

Emergency orders include: "quarantine", "seized", "Utah Inspection and Condemned", "sealed", "reject", "retain", "denatured", "detained", and "suspect", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-3-6, 4-3-9, 4-5-5(1)(a), 4-9-6, 4-9-7, 4-10-11(1) and 4-33-8(1).

(B) A Citation means a lawful notice, issued by the division, which is intended to immediately remedy a violation of agricultural statutes or rules by a person, business, operator, etc. Pursuant to Section 4-2-15, a citation may include a penalty assessment, or provide for a fine to take effect within a stated time period.

R70-201-3. Emergency Order.

The Division may issue an emergency order when it determines that there is an immediate and significant danger to public health, animal health, safety or welfare may be issued to secure the well-being, safety, or removal of danger to state citizens. Orders are intended to protect the public from unlawful agricultural and food products and services.

When an emergency order is justified, and conditions warrant immediate action by the Division, it shall: Promptly issue a written order, that includes the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) a brief statement of findings of fact as determined by the division,

(3) references to statutes or administrative rules violated,

(4) the reasons for issuance of the emergency order,

(5) the signature of the agency representative, and

(6) a space/line for the signature of the person (a signature is not required if the person refuses).

This order shall be written and no product, condition, or service subject to the order shall be released, except upon the subsequent written release by the department.

R70-201-4. Citation.

The Commissioner or persons designated by the Commissioner, may enforce this rule by the issuance of a citation for violation, in order to secure subsequent payments of fines or the imposition of penalties:

The citation will include the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) references to the statutes or rules violated,

(3) a brief statement to the findings of fact as determined by the division,

(4) a penalty or fine amount,

(5) the signature of the agency representative,

(6) a space or line for the signature of the person (a signature is not required if the person refuses),

(7) a statement to the effect that a person is allowed to request an administrative hearing if the person feels that a citation was not warranted.

Fine or penalty amounts will be set by the department or the division, under the direction of the commissioner, for amounts up to $5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor. In accordance with Section 4-2-15, fine or penalty amounts shall be determined according to the following: PENALTY AMOUNTS: Citation per violation up to, but not to exceed $500; if not paid within 15 days, 2 times citation amount; if not paid within 30 days, 4 times citation amount.

R70-201-5. Request for Hearing.

When any order or citation, as defined above, is issued, the person being charged with the violation may elect to file, within allowable time limits, a request for the department to schedule an informal Administrative Hearing in accordance with the provisions of Section 4-1-3.5.

KEY: agricultural law
April 15, 1998 4-2-2(l)(i)
Notice of Continuation January 12, 2017

R70. Agriculture and Food, Regulatory Services.
R70-320. Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing.
R70-320-1. Authority.

A. Promulgated Under Authority of Subsection 4-2-2(1)(j) and Section 4-3-2.

B. Scope: It is the intent of these rules to encourage the sanitary production of milk, to promote the sanitary processing of milk for manufacturing purposes.

R70-320-2. General.

A. The Commissioner of Agriculture and Food shall administer the provisions of these rules which are:

1. To establish and promulgate minimum standards for milk for manufacturing purposes, its production, transportation, grading, use, processing, and the packaging, labeling and storage of dairy products made therefrom.

2. To inspect dairy farms and dairy plants, to certify dairy farms for the production and sale of milk for manufacturing purposes and to license dairy plants to handle and process milk for manufacturing purposes, in conformity with minimum standards and specifications prescribed by such rules as may be issued hereunder in effectuation of the intent hereof.

3. To require the keeping of appropriate books and records by plants licensed hereunder.

4. To license qualified milk graders and bulk milk collectors.

B. The Utah Commissioner of Agriculture and Food may for good cause, after notice and opportunity for hearing, suspend or revoke certification and licenses issued hereunder.

C. No person, firm, or corporation shall produce, sell, offer for sale, or process milk for the manufacture of human food except in accordance with the provisions of these rules issued pursuant hereunto.

D. Violation of any portion of these rules may result in civil or criminal action, pursuant to Section 4-2-2.

E. All manufacturing dairy plants shall furnish the Department with a current list of their producers semi-annually. These lists shall be received no later than January 15th and July 15th of the current year.

R70-320-3. Definitions.

A. Definitions. Words used in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

1. Regulatory agency. The Utah Commissioner of Agriculture and Food or his authorized representative is authorized by law to administer this rule.

2. Department. The Utah Department of Agriculture and Food.

3. License. A license issued under this Regulation by the Department.

4. Fieldman. A person qualified and trained in the sanitary methods of production and handling of milk as set forth herein, and generally employed by a processing or manufacturing plant for the purpose of dairy farm inspections and quality control work.

5. Compliance Officer. An employee of the Department qualified, trained, and authorized to perform dairy farm or plant inspections, and raw milk grading.

6. Milk Grader. A person licensed by the Utah Department of Agriculture and Food who is qualified and trained for the grading of raw milk.

7. Producer. The person or persons who exercise control over the production of the milk delivered to a processing plant or receiving station and those who receive payment for this product. A "new producer" is one who has only recently entered into the production of milk for the market. A "transfer producer" is one who has been shipping milk to one plant and transfers his shipment to another plant.

8. Milk hauler. Any person who transports raw milk and/or raw milk products from a dairy farm, milk plant, receiving or transfer station.

9. Farm Tank. A tank used to cool and/or store milk prior to transportation to the processing plant.

10. Transportation Tank and Bulk Tank. Tanks used to transport milk from a farm to a processing plant.

11. Dairy Farm or Farm. A place or premise where one or more milking cows are kept, a part or all of the milk produced thereon being delivered, sold, or offered for sale to a plant for manufacturing purposes.

12. Dairy Plant or Plant. Any place, premise, or establishment where milk or dairy products are received or handled for processing or manufacturing and/or prepared for distribution. When "plant" is used in connection with minimum specifications for plants or licensing of plants, it means only those plants that manufacture, process and/or distribute dairy products.

13. Milk. The normal lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. The word "milk" used herein includes only milk for manufacturing purposes.

14. Milk for manufacturing purposes. Milk produced for processing and manufacturing into products for human consumption that meets the requirements of this rule.

15. Acceptable Milk. Milk that is produced under the requirements as outlined in this rule.

16. Probational Milk. Milk that may not be produced under the requirements as outlined in this rule and that may be accepted by plants for specific time periods.

17. Reject Milk. Milk that does not meet the requirements of this rule.

18. Suspended Milk. All of a producer's milk suspended from the market by the provisions of this rule.

19. Dairy Products. Butter, cheese (natural or processed), dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated (plain or sweetened), and such other products, for human consumption, as may be otherwise designated.

20. Farm Certification. Certification by a compliance officer that a producer's herd, milking facility and housing, milk procedure, cooling, milkhouse or milk room, utensils and equipment and water supply have been found to meet the applicable requirements of this rule.

21. Official Methods. Official Methods of Analysis of the Association of Official Analytical Chemists.

22. Standard Methods. Standard Methods for the Examination of Dairy Products.

23. 3-A Sanitary Standards. The standards for dairy equipment formulated by the 3-A Sanitary Standards Committees representing the International Association of Milk and Food Sanitarians, the United States Public Health Service, and the Dairy Industry Committee.

24. C-I-P or Cleaned-in-Place. The procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation.

25. Permit. A document issued by the Department in order to sell milk and milk products.

R70-320-4. Milk Permits.

By October 15, 1990, farms producing and selling milk for manufacturing purposes shall apply for a permit.

1. Permits shall be required for the sale of milk for manufacturing purposes.

2. Only one permit shall be issued per facility.

3. Farm permits shall be effective from the date of issuance unless suspended or revoked by the Department.

R70-320-5. Farm Inspection.

A. Each dairy farm operated by a producer of milk for manufacturing purposes shall be inspected initially and on any change of market by a compliance officer and shall have a passing score before the first milk is shipped. All dairy farms producing milk for manufacturing purposes shall be inspected no less than once in each six month period by a compliance officer.

B. Producers who cannot produce milk of wholesome sanitary quality will be suspended. Producers who are not in substantial compliance with Section R70-320-12 relating to requirements for a farm producing milk for manufacturing will be re-inspected after an appropriate time for correction of deficiencies. If the farm does not then meet the requirements for farms producing milk for manufacturing, the producer permit to sell milk for manufacturing from that farm shall be suspended until such time as the farm receives an acceptable score. The producer will be charged for the time and mileage expended by the department for any subsequent visits required.

R70-320-6. Minimum Quality Standards for Milk for Manufacturing Purposes.

A. Basis. The classification of raw milk for manufacturing purposes shall be based on sight and odor and quality control tests for sediment content, bacterial estimate and somatic cell.

B. Sight and odor. The odor of acceptable raw milk shall be fresh and sweet. The milk shall be free from objectionable off-odors that would adversely affect the finished product, and it shall not show any abnormal condition such as curdled, ropy, bloody, or mastitis condition as determined by an approved milk grader.

C. Sediment content classification. Milk in farm bulk tanks shall be classified for sediment content as follows:

TABLE
SEDIMENT CONTENT

Sediment Content Classification	Milk in farm bulk tanks Mixed sample, 0.40 in. diameter disc or equivalent
No. 1 (acceptable)	Not to exceed 0.50 mg. equivalent
No. 2 (acceptable)	Not to exceed 1.50 mg. equivalent
No. 3 (probational)	Not to exceed 2.50 mg. equivalent
No. 4 (reject)	Over 2.50 mg. equivalent

Sediment content based on comparison with applicable charts of Sediment Standards prepared by the United States Department of Agriculture.

1. Method of Testing. Methods for determining sediment content of milk shall be those described in the current edition of Standard Methods for the examination of dairy products.

2. Frequency of tests. At least once each month a sample shall be taken from each farm bulk tank and at irregular intervals.

3. Acceptance or rejection of milk. If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified as No. 4, the milk shall be rejected. If the shipment of milk is co-mingled with other milk in a transport tank, the next shipment shall not be accepted until its quality has been determined at the farm before being picked up; however, if the person making the test is unable to get to the farm before the next shipment, it may be accepted but no further shipments shall be accepted unless the milk meets the requirements of No. 3 or better. In the case of milk classified as No. 3 or No. 4, the producer shall be notified immediately and the next shipment shall be tested.

4. Retests. On tests of the next shipment, milk classified as No. 1, No. 2, or No. 3 shall be accepted, but No. 4 milk shall be rejected. Retests of bulk milk classified as No. 4 shall be made at the farm before pickup. The producers of No. 3 or No. 4 milk shall be notified immediately and the next shipment tested. This procedure of retesting successive and accepting probational (No. 3) milk and rejecting No. 4 milk may be continued for a period, not to exceed ten calendar days. If at the end of this time, the producer's milk does not meet the acceptable sediment content classification (No. 1 or No. 2) it shall be suspended from the market.

D. Bacterial estimated classification. Milk shall be classified for bacterial estimate by one of the listed tests of the current standard methods.

TABLE

Bacterial estimate classification	Direct microscopic clump count, standard plate count or loop method
Acceptable	Not over 500,000 per ml.
Undergrade (probation 4 weeks)	Over 500,000 per ml

1. Method of testing. Methods for determining the bacterial estimate of milk shall be those described in the current edition of Standard Methods and the current edition of the Official Methods of the Analysis of the Association of Official Analytical Chemists or other methods approved by the Department.

2. Frequency of tests. At least once a month at irregular intervals, a mixed sample of each producer's milk shall be tested.

3. Acceptance of milk. If the sample of milk is classified as No. 1, the producer's milk may be accepted without qualification. If the sample is classified as undergrade, probational, the producer's milk may be accepted for a temporary period of four weeks. The producer of undergrade milk shall be notified immediately.

4. Retests. Additional samples shall be tested and classified at least weekly, and the producer shall be notified immediately of the results. This procedure of testing at least weekly and accepting undergrade milk may be continued for a period not exceeding four weeks. If at the end of this time the producer's milk does not meet the acceptable bacterial estimate requirements (No. 1 or No. 2) it shall be suspended from market.

E. Abnormal Milk. The Wisconsin Mastitis Test may be used as a screening test. A test of 18 mm or higher shall be considered to indicate abnormal milk and shall require confirmation by the Direct Microscopic Somatic Cell Count Method or an equivalent method according to the current edition of standard methods.

Somatic Cell Count: Samples exceeding 18 mm WMT to be confirmed by DMSCC or acceptable tests. Not to exceed 750,000 per ml.

1. Frequency of tests. At least four times in each six month period, at irregular intervals, a sample of each producer's milk shall be tested.

2. Notification to the department, written notice to the producer and a farm inspection are required whenever two of the last four somatic cell counts exceed the standard.

3. Within 21 days after the farm inspection, another sample shall be tested for somatic cell count. If the result exceeds the allowable limit for somatic cell count, the producer's permit shall be suspended until corrections are made and the somatic cell count is reduced to 750,000 or less.

F. Drug Residue Level.

1. All licensed dairy plants shall not accept for processing any milk testing positive for drug residue. All milk received at a licensed diary plant shall be sampled and tested, prior to processing, for beta lactam drug residue. When directed by the regulatory agency, additional testing for other drug residues shall be performed. Samples shall be analyzed for beta lactams and other drug residues by methods evaluated by the Association of Official Analytical Chemists (AOAC) and

accepted by the Food and Drug Administration (FDA) as effective in determining compliance with "safe levels" or established tolerances. "Safe levels" and tolerances for particular drugs are established by the FDA.

2. Individual producer milk samples for beta lactam drug residue testing shall be obtained from each milk shipment, and shall be representative of all milk received from the producer.

3. A load sample shall be taken from the bulk milk shipment after its arrival at the plant and prior to further commingling. A sample shall be obtained at the plant using a procedure that includes all milk produced and received.

4. Follow-up to positive-testing. When a load sample tests positive for drug residue, industry personnel shall notify the appropriate state regulatory agency immediately, according to state policy, of the positive test result and of the intended disposition of the shipment of milk containing the drug residue. All milk testing positive for drug residue shall be disposed of in a manner that removes it from the human or animal food chain, except when acceptably reconditioned under FDA compliance policy guidelines.

5. Identification of producer. Each individual producer sample represented in the positive-testing load sample shall be singly tested as directed by the state regulatory agency to determine the producer of the milk sample testing positive for drug residue. Identification of the producer responsible for producing the milk testing positive for drug residue, and details of the final disposition of the shipment of milk containing the drug residue, shall be reported immediately to the state regulatory agency.

6. Milk shipment from the producer identified as the source of milk testing positive for drug residue shall cease immediately and may resume only after a sample from a subsequent milking does not test positive for drug residue.

7. Enforcement. A penalty sanctioned by the department shall be imposed on the producer for each occurrence of shipping milk testing positive for drug residue.

8. The producer shall review the "Milk and Dairy Beef Quality Assurance Program" with a licensed veterinarian within 30 days after each occurrence of shipping milk testing positive for drug residue. A signed copy of a certificate confirming that the "Quality Assurance Program" has been reviewed shall be signed by the responsible producer and a licensed veterinarian and forwarded to the department.

9. If a producer ships milk testing positive for drug residue three times within a 12-month period, the department shall initiate administrative procedures to suspend the producer's milk shipping privileges according to state policy.

10. Record of tests. Accurate records listing the results of drug residue tests for each load and individual producer shall be kept on file at the plant. Drug residue test results are to be retained for 12 months. Notifications to the department of positive drug residue tests and intended and final dispositions of milk testing positive for drug residue are to be retained for 12 months.

G. Pesticides.

Composite milk samples shall be sampled and tested for pesticides at a frequency which the department determines is adequate to protect the consumer. The test results from the samples shall not exceed established FDA limits. If a pesticide test is positive, an investigation shall be made to determine the cause and the cause shall be corrected. Milk and milk products containing residues in excess of actionable levels shall not be offered for sale.

R70-320-7. Animal Health.

A. Health of Herd.

1. General Health. All animals in the herd shall be maintained in a healthy condition, and shall be properly fed and kept.

2. Tuberculin Test. The herd shall be located in an area within the State which meets the requirements of a modified accredited area. If the herd is not located in such an area, it shall be tested annually under the jurisdiction of the aforesaid program. All additions to the herd shall be from an area or from herds meeting these same requirements.

3. Brucellosis Test. The herd shall be located in an area within the State which meets the requirements of a modified accredited area. If the area in which the herd is located does not meet these requirements, the herd shall be blood-tested annually or milk ring tested semi-annually. All additions to the herd shall be from an area or from herds meeting the requirements of Plan A for the eradication of brucellosis in accordance with the above Uniform Methods and Rules.

4. Mastitis and Drug Residues. Milk from cows known to be infected with mastitis or milk containing residues of drugs used in treating mastitis or any other infection shall not be sold or offered for sale for human food.

R70-320-8. Rejected Milk.

A. A plant shall reject specific milk from a producer if it fails to meet the requirements for sight and odor, as required by Subsection R70-320-6(B) or if it is classified No. 4 for sediment content, as required by Subsection R70-320-6(C) or if it fails to meet the provisions of Subsection R70-320-6(E), relating to abnormal milk.

B. Reject milk shall be identified with a reject tag, and harmless food coloring may be added.

C. Field Service. A fieldman shall visit each producer of probational status or reject milk within seven days from the date of the second consecutive substandard test to inspect equipment, utensils and methods of handling the milk and to make suggestions and recommendations for improving milk quality.

R70-320-9. Suspended Milk for Manufacturing.

A. The department may suspend the permit of a producer if one of the following occurs:

1. A new producer's milk does not meet the requirements for acceptable milk, as required by Subsections R70-320-6(C) and R70-320-6(D).

2. The milk has been in a probational (No. 3) sediment content classification for more than ten calendar days, as required by Subsection R70-320-6(C).

3. The milk has been classified "undergrade" for bacterial estimate for more than four successive weeks, as required by Subsection R70-320-6(D).

4. If three out of the last five samples tested for somatic cells exceed the allowable limit, as required by Subsection R70-320-6(E).

5. A growth inhibitor or pesticide residue exceeds actionable level, as required by Subsection R70-320-6(F).

6. If the producer refuses to permit farm inspection.

B. When a plant discontinues receiving milk from a producer for any of the reasons listed in this section, it shall notify the Department immediately and confirm such act in writing.

C. Milk from a producer whose milk has been excluded from the market may be re-accepted by a plant when the cause for exclusions has been corrected and the milk classified as acceptable.

R70-320-10. Testing of Milk.

A. Testing. An examination shall be made on the first shipment of milk from producers shipping milk to a plant for the first time or after a period of non-shipment. The milk shall meet the requirements for acceptable milk. Thereafter milk shall be tested in accordance with the rule.

B. Transfer producers.

1. When a producer discontinues milk delivery to one

plant and begins delivery to a different plant, the dairy farm shall be inspected by the Department and shall have a passing score before milk is shipped.

2. Quality control records may be obtained from the previous buyer for the previous six month period. The new buyer shall examine and classify each transfer producer's first shipment of milk and shall subsequently examine shipment in accordance with this rule.

R70-320-11. Record of Tests.

Accurate records listing the results of quality tests of each producer shall be kept on file at the receiving plant for not less than twelve months and shall be available for examination by the Department.

R70-320-12. Farms Producing Milk for Manufacturing.

A. Milking Facility and Housing.

1. A milking barn or milking parlor of adequate size and arrangement shall be provided to permit normal sanitary milking operations. It shall be well lighted and ventilated, and the floors and gutters in the milking area shall be constructed of concrete or other impervious material. The facility shall be kept clean, the manure removed daily and no swine, fowl, or other animals shall be permitted in any part of the milking area. Concentrates and feed, if stored in the building, shall be kept in a tightly covered box or bin.

2. Animal biologics and other drugs intended for treatment of animals, and insecticides approved for use in dairy operations, shall be clearly labeled and used in accordance with label instructions, and shall be stored in a manner which will prevent accidental contact with milk and milk contact surfaces. Only drugs that are approved by the FDA or biologics approved by the USDA for use in dairy animals that are properly labeled according to FDA or USDA regulations shall be administered. When drug storage is located in the milkroom, milkhouse, or milking area, the drugs shall be stored in a closed, tight-fitting storage unit. Drugs shall be segregated in such a way so that drugs labeled for use in lactating dairy animals are separated from drugs labeled for use in non-lactating dairy animals.

3. The yard or loafing area shall be of ample size to prevent overcrowding, shall be drained to prevent forming of water pools, and shall be kept clean.

B. Milking Procedure.

1. The udders and flanks of all milking cows shall be kept clean. The udders and teats shall be washed, sanitized and wiped dry with a clean damp cloth, paper towel or any other sanitary method. The milker's clothing shall be clean and his hands clean and dry. No person with an infected cut or open sore on the person's hands or arms shall milk cows, or handle milk or milk containers, utensils or equipment.

2. Milk stools and surcingles shall be kept clean and properly stored. Dusty operations shall not be conducted immediately before or during milking.

3. Milk must be protected against contamination while straining.

C. Cooling

1. Milk shall be cooled to 45 degrees F or lower within two hours after each milking and maintained at 45 degrees F or lower until transferred to the transport tank.

D. Milkhouse or Milkroom.

1. A milkhouse or milkroom conveniently located and properly constructed, lighted, and ventilated shall be provided for handling and storing the utensils and equipment. It shall not be used for any other purpose, and shall be equipped with hot water, two compartment wash vat, utensil rack and cooling facilities for the milk. It shall be partitioned, sealed, and screened to prevent the entrance of dust, flies, or other contamination. The floor of the building shall be of concrete or other impervious material and graded to a drain. The walls and ceilings shall be constructed of smooth easily cleaned material. All outside doors shall be self-closing. At least 20 foot candles of light shall be provided in all working areas.

2. The farm tank shall be properly located in the milkroom. There shall not be less than 18 inches clearance with 24 inches recommended on three sides of the tank and a minimum of 36 inches on the outlet side of the tank for access to all areas for cleaning and servicing. It may not be located over a floor drain, under a ventilator or under a light fixture.

3. An adequate platform or slab constructed of concrete or other impervious material shall be provided outside the milk house, properly centered under a suitable port opening in the wall of the milkhouse. The opening shall be fitted with a tight self-closing door. The truck approach to the milkhouse or milkroom shall be properly graded and surfaced to prevent mud or pooling of water at the point of loading.

4. Building plan approval. Plans for new dairy building construction or remodeling shall be submitted to the Department for approval before construction begins.

E. Utensils and Equipment.

1. Utensils, milk coolers, milking machines (including pipeline systems) and other equipment used in the handling of milk shall be maintained in good repair, and shall be washed, rinsed and drained after each milking, stored in suitable facilities, and sanitized immediately before use. Farm bulk tanks shall meet 3-A Sanitary Standards for construction at the time of installation and shall be properly installed.

F. Water Supply.

1. The dairy farm water supply shall be approved, properly protected and of safe, sanitary quality, and have ample water and pressure for the cleaning of dairy utensils and equipment.

2. An automatic hot water storage tank (pressure type) of adequate size shall be provided but shall not be less than 30 gallon capacity and equipped with a thermostat capable of maintaining water temperature at least 140 degrees F. Gas water heaters, if used, shall be properly ventilated.

G. Sewage Disposal. Sewage shall be disposed of in a manner that complies with the State Health and EPA requirements.

H. There shall be available in the milkhouse or room a dairy type thermometer, accurate within two degrees F., integral with the tank construction or operation. The driver shall possess an accurate approved type thermometer. The driver shall check periodically the thermometer by a qualified method to determine its accuracy. Thermometers must be properly sanitized before each use.

I. Qualifications for Farm Certification. Farm certification requires compliance with the items listed on the Farm Certification Report Form as follows:

1. A rating of satisfactory for all items in A--Facilities and

2. A total rating of not less than 85 percent for the applicable items in B--Methods, provided no individual item is rated less than 75 percent of its maximum score.

R70-320-13. Minimum Specifications for Licensed Dairy Plants.

A. Building, Facilities, Equipment and Utensils.

1. Premises. The plant area and surroundings shall be kept clean. A drainage system shall be provided for rapid drainage of all water from plant buildings, including surface water around the plant and on the premises.

a. There shall be provided an area properly designed and constructed for the unloading and washing of bulk milk transport trucks. It will have a concrete floor sloped to a trapped drain.

(1) If the area is completely enclosed (walls and ceiling with the doors closed) during the unloading process and the dust cover or dome and the manhole cover is opened slightly and held in this position by the metal clamps used to close the cover

then a filter is not required. However, if the dust covers and/or manhole cover is open in excess of that provided by the metal clamps or the covers have been removed, a suitable filter is required for the manhole.

(2) If the area is not completely enclosed or doors of the unloading area are open during unloading, a suitable filter is required for the manhole and/or air inlet vent and suitable protection must be provided over the filter material either by design of the filter holding apparatus or a roof or ceiling over the area. Direct connections from milk tank truck to milk tank truck must be made from valve to valve and not through the manhole and the dust cover dome of the milk tank truck.

2. Buildings.

a. Construction and Maintenance. Buildings shall be of sound construction, and the exterior and interior shall be kept clean and in good repair to protect against dust, dirt, and mold, and to prevent the entrance or harboring of insects, rodents, vermin, and other animals.

(1) Outside doors, windows, skylights, and transoms shall be screened or otherwise covered. Outside doors shall open outward and be self-closing or be protected against the entrance of rodents and flies. Those leading to processing rooms shall be of metal construction. Window sills on new construction shall be sloping. Outside conveyor openings and other special type outside openings shall be protected by doors, screens, flaps, fans or tunnels. Outside openings for sanitary pipelines shall be covered when not in use; and service-pipe openings shall be completely cemented or have tight metal collars.

(2) All rooms, compartments, coolers, freezers, and dry storage space in which any raw material, packaging or ingredient supplies, or finished products are handled, processed, manufactured, packaged, or stored shall be so designed and constructed as to assure clean and orderly operations. Rooms for receiving milk shall be separated from the processing rooms by a partition or suitable arrangement of equipment or facilities to avoid contamination of milk or dairy products. Boiler and tool rooms shall be separated from other rooms. Toilet and dressing rooms shall be conveniently located and shall not open directly into any room in which milk, dairy products, or ingredients are handled, processed, packaged, or stored. Doors of all toilet rooms shall be self-closing, and fixtures shall be kept clean and in good repair.

(3) Plans for new plant construction or remodeling of existing plants shall be submitted to the Department for approval prior to such new construction or remodeling.

b. Interior Finishing. In all rooms, in which milk or dairy products are received, handled, processed, manufactured, packaged, or stored, except dry storage of packaged finished products, or in which equipment or utensils are washed; the walls, ceilings, partitions, and posts shall be smoothly finished with a washable material of light color that is impervious to moisture. The floors in these rooms shall be of concrete or other impervious material and shall be smooth, properly graded to drain, and have drains trapped. The plumbing shall be so installed as to prevent back-up sewage into the plant. On new construction or extensive remodeling, the floors shall be joined and coved with the walls to form watertight joints. Sound, smooth, wood floors may be used in certain packaging rooms where the nature of the product permits. Toilet and dressing rooms shall have impervious floors and smooth walls.

c. Ventilation. All rooms and compartments (including storage space and toilet and dressing rooms) shall be ventilated to maintain sanitary conditions, prevent undue condensation of water vapor, and minimize or eliminate objectionable odors.

d. Lighting. Lighting, whether natural or artificial, shall be of good quality and well distributed in all rooms and compartments. All rooms where milk or dairy products are handled, processed, manufactured, or packaged, or where equipment or utensils are washed, shall have at least 30 foot-candles of light intensity on all working surfaces; areas where dairy products are examined for condition and quality, at least 50 foot-candles of light intensity; and all other rooms, at least 5 foot-candles of light intensity measured 30 inches above the floor. Light bulbs and fluorescent tubes shall be protected against shattering and/or falling into the product if broken.

e. Laboratory. Consistent with the size of the plant and the volume and variety of products manufactured, an adequate laboratory shall be provided, maintained, and properly staffed with qualified and trained personnel for quality control and analytical purposes. It shall be located reasonably close to the processing activity in a well lighted and ventilated room of sufficient size to permit proper performance of the tests necessary to evaluate the quality of raw and finished products. A central or commercial laboratory that serves more than one plant and that provides the same services may be utilized.

3. Facilities.

a. Water Supply. Both hot and cold water of safe and sanitary quality shall be available in sufficient quantity for all plant operations and facilities. Water from other lines, when officially approved, may be used for boiler feed water and condenser water, if such water lines carrying the sanitary water supply, and the equipment is so constructed and controlled as to preclude contamination of any milk product or milk product contact surface. There shall be no cross connections between safe and unsafe water lines. Culinary water in the plant is to be from an approved source.

(1) Bacteriological examination shall be made of the plant sanitary water supply at least once every six months by the appropriate regulatory agency to determine purity and safety for use in processing or manufacturing dairy products.

b. Employee Facilities. In addition to toilet and dressing rooms, the plant shall provide the following employee facilities: conveniently located sanitary drinking water; a locker or other suitable facility for each employee; handwashing facilities, including hot and cold running water, soap or other detergents and sanitary towels or air driers, in or adjacent to toilet and dressing rooms and at other places where necessary for the cleanliness of all personnel handling products and self-closing containers for used towels and other wastes.

(1) A durable, legible sign shall be posted conspicuously in each toilet and dressing room directing employees to wash their hands before returning to work.

c. Steam. Steam shall be supplied in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment. Steam that may come into direct contact with milk or dairy products shall be conducted through a steam strainer and purifier equipped with a steam trap and shall be free from any compounds that may contribute flavors or endanger health. Only non-toxic boiler compounds shall be used.

d. Disposal of Wastes. The plant sewage system shall have sufficient slope and capacity to remove readily all waste from processing operations. Where a public sewer is not available, wastes shall be disposed of by methods approved by the appropriate government agency. Containers for the collection and holding of wastes shall be constructed of metal or other equally impervious material, kept covered with tight-fitting lids, and placed outside the plant on a concrete slab or on a rack at least 12 inches above the ground. Solid wastes shall be disposed of regularly and the containers cleaned before reuse, and dry waste paper shall be properly disposed of.

4. Equipment and Utensils.

a. Construction and Installation.

New equipment shall meet 3-A Sanitary Standards designed for the intended use. Equipment and utensils coming in contact with milk or dairy products, including sanitary pumps, piping, fittings, and connections, shall be constructed of stainless steel or equally corrosion resistant material; except that, where the use of stainless steel is not practicable. Copper

kettles for swiss cheese and copper evaporators and brass fillers for evaporated milk may be approved if free from corroded surfaces and kept in good condition. Wooden churns in use may be approved temporarily if maintained in good condition. Nonmetallic parts having product contact surfaces shall be of material that is resistant to abrasion, scratching, scoring and distortion, is non-toxic, fat-resistant, and relatively inert or non-absorbent or insoluble, and that will not adversely affect the flavor of the products.

(1) All equipment and piping shall be so designed and installed as to be easily accessible for cleaning and shall be kept in good repair and free from cracks and corroded surfaces. Milk pumps shall be of a sanitary type and easily dismantled for cleaning. New or rearranged equipment shall be set out at least 24 inches from any wall or spaced at least 24 inches between pieces of equipment that measure more than 48 inches on the parallel sides. (This shall not apply between storage tanks when the face of the tanks extends through the wall into the processing room.) All parts or interior surfaces of equipment, pipes (except certain piping cleaned in place), or fittings, including valves and connections, shall be accessible for inspection. Cleaned-in-place sanitary piping shall be properly installed and self-draining. Welded sanitary pipeline systems when used with C-I-P cleaning will be acceptable if properly engineered and installed.

b. Pasteurization Equipment.

Where pasteurization is intended or required, an automatic flow-diversion valve and holding tube, or its equivalent if not part of the existing equipment, shall be installed on all high-temperature short-time pasteurizing equipment to assure complete pasteurization. Equipment and operation shall be in accordance with 3-A Accepted Practices for the Sanitary Construction, Installation, Testing and Operation of High Temperature Short-Time Pasteurizers.

(1) Long stem indicating thermometers that are accurate within plus or minus 0.5 degrees F, for the applicable temperature range, shall be provided for determining temperatures of pasteurization of products in vats and for verifying the accuracy of recording thermometers. Short-stem indicating thermometers that are accurate within plus or minus 0.5 degrees for the applicable temperature range shall be installed in the proper stationary position in all high-temperature short-time and dome-type pasteurizers and all storage tanks where temperature readings are required.

(2) Recording thermometers that are accurate within 1 degree F plus or minus, between 142 degrees and 145 degrees F or in the case of 15-second pasteurization between 160 degrees and 163 degrees F shall be used on each pasteurizer to record pasteurization temperature.

c. Cleaning and Sanitizing. Equipment, sanitary piping, and utensils used in receiving, storing, processing, manufacturing, packaging, and handling of milk or dairy products, and all product contact surfaces of homogenizers, high-pressure pumps, and high-pressure lines shall be kept clean and sanitary. Stacks, elevators, conveyors, and the packing glands on all agitators, pumps, and vats shall be inspected at regular intervals and kept clean. Equipment coming in contact with milk or dairy products shall have effective bactericidal or sanitizing treatment immediately before use.

(1) Equipment not designed for C-I-P cleaning shall be disassembled daily and thoroughly cleaned and sanitized. Dairy cleansers, wetting agents, detergents, sanitizing agents, or other similar material may be used that will not contaminate or adversely affect dairy products. Steel wool or metal sponges shall not be used in the cleaning of any dairy equipment or utensils.

(2) C-I-P cleaning shall be used only on equipment and pipeline systems that are designed and engineered for that purpose. Installation and cleaning procedures shall be in accordance with 3-A Method for the Installation and Cleaning of Cleaned-in-Place Sanitary Milk Pipelines for Milk and Milk Products Plants.

(3) Areas and equipment which can't be cleaned with water in the plant shall be thoroughly vacuumed regularly with a heavy-duty industrial vacuum cleaner and the material picked up shall be disposed of to destroy any insects present.

B. Plant Operations.

1. Milk and Milk Products.

All milk and milk products, including concentrated milk and milk products, shall be packaged at the plant where final pasteurization is performed. Such packaging shall be done without undue delay following final pasteurization.

a. Pasteurization.

When pasteurization is intended or required, or when a product is designated "pasteurized", pasteurization shall be accomplished by heating every particle of milk or skim milk to a temperature of not less than 145 degrees F and cream and other milk products to at least 150 degrees F and ice cream mix to at least 155 degrees F and holding them at those temperatures continuously for not less than 30 minutes, or milk or skim milk to a temperature of 161 degrees F and cream and other milk products to at least 166 degrees F for not less than 15 seconds, and ice cream mix to at least 175 degrees F for not less than 25 seconds, or by any other combination of temperature and time giving equivalent results. The phenol value of the pasteurized product shall be no greater than the maximum specified for the particular product, as determined by the phosphatize test, Method II, of the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists".

b. Cream for Buttermaking. Cream for buttermaking shall be pasteurized at a temperature of not less than 165 degrees F and held continuously in a vat at such temperature for not less than 30 minutes, or at a temperature of not less than 185 degrees F for not less than 15 seconds, or any other temperature and holding time approved by the Department that will assure pasteurization and comparable keeping quality characteristics. If the vat method of pasteurization is used, vat covers shall be kept closed during the holding and cooling periods.

2. Cooling.

Processed fluid milk products shall be cooled promptly after heat treatment to such a temperature as will adequately inhibit development or other deterioration of quality.

3. Storage.

a. Utensils and portable equipment.

Utensils and portable equipment used in processing operations shall be stored above the floor, in clean, dry locations, and in self-draining positions on racks constructed of impervious, corrosion resistant material.

b. Raw product storage.

All milk shall be held and processed under conditions and at temperatures that will avoid contamination and rapid deterioration. Drip milk from can washers or any other source shall not be used for the manufacture of dairy products. Bulk milk in storage tanks within the dairy plant shall be handled in such a manner as to minimize bacterial increase and shall be maintained at 45 degrees F. or lower until processing begins. This does not preclude holding milk at higher temperatures for a period of time, where applicable to particular manufacturing or processing practices.

The bacteriological estimate of commingled milk in storage tanks shall be 1 million per m. or lower.

c. Non Refrigerated Products.

Dairy products in dry storage shall be arranged in aisles, rows, sections, or lots or in such a manner as to be orderly and easily accessible for inspection and as to permit adequate cleaning of the room. Dunnage or pallets shall be used when applicable. Dairy products shall not be stored with any product that would damage them or impair their quality. Open

containers shall be carefully protected from contamination.

d. Refrigerated Products. All products requiring refrigeration shall be stored under such optimum temperatures and humidity as will maintain their quality and condition. Products shall not be placed directly on the floors or be exposed to foreign odors or conditions such as dripping or condensation that might cause package or product damage.

e. Supplies.

Items in supply rooms shall be kept clean and protected and be so arranged as to permit inspection of supplies and cleaning and spraying of the room. Insecticides and rodenticides shall be properly labeled, segregated, and stored in a separate room or cabinet away from milk or dairy products or packaging supplies.

4. Laboratory Control Tests.

Quality control tests shall be made on flow samples as often as necessary to check the effectiveness of processing in order to correct processing deficiencies. Routine analyses shall be made on raw materials and finished products to assure adequate composition control. When applicable, keeping quality tests shall be made to determine product stability.

5. Packaging and General Identification.

a. Packaging. Dairy products shall be packaged in commercially acceptable containers or packaging material that will protect the quality of the contents in regular channels of trade. Prior to use packaging materials shall be protected against dust, mold and other possible contamination.

b. Butter liners shall be of approved plastic or waxed covered parchment or other material that may be approved by the Department.

c. General Identification.

Commercial bulk shipping containers for dairy products shall be legibly marked with the name of the product, net weight or content, name and address of processor, manufacturer or distributor, and plant license number. Consumer-packaged products shall be legibly marked with the name of product, net weight, or content, and name and address of packer or distributor.

C. Plant Licensing.

1. Qualifications.

Plant licensing requires compliance to specifications in Section 8a through 8c. In addition, licensing requires that

a. not more than 10 percent of the cans (including lids) shall show open seams, cracks, rust, milkstone, or any unsanitary condition;

b. where pasteurization is intended or required, and a high-temperature short-time unit is used, it shall be equipped with a flow-diversion valve and holding tube or its equivalent; and

c. a safe water line shall be provided with no cross-connections between safe and unsafe lines.

R70-320-14. Licensing Plant, Milk Graders, and Bulk Milk Collectors.

A. Necessity for Plant License.

Every plant receiving or processing milk for the manufacture of dairy products shall be inspected and licensed as provided in Section R70-320-13. A new plant shall be inspected and licensed as provided in Section R70-320-13 before buying or processing any milk for the manufacture of dairy products. No unlicensed plant shall handle, purchase or receive milk or manufacture dairy products therefrom.

1. All licensed plants shall be evaluated at least semi-annually after issuance of the initial license to determine eligibility for license renewal. The inspection procedure for license renewal shall be the same as that for initial licensing.

B. Application for License.

Applications to the Department for a new or renewal license for dairy plants, milk graders, and bulk milk haulers shall contain the name and address of the applicant and such other pertinent information as may be required.

C. Plant Inspection.

Each plant shall be inspected by a compliance officer. If, upon initial inspection, the compliance officer finds that the plant meets the requirements for licensing described in Subsections R70-320-8(A) and R70-320-8(C) and Sections R70-320-15 and R70-320-16, as indicated by the Plant Inspection Report Form, a license shall be issued to the plant as described in Section R70-320-13. If the plant does not meet the requirements for licensing, the plant shall be re-inspected by a compliance officer within 30 days of the initial inspection. A longer time may be allowed if major changes or new equipment is required. If at this time the plant meets the requirements for licensing, a license shall be issued. If the plant does not meet the requirements for licensing, it shall not be licensed, and its authorization to handle, purchase, or receive milk or to manufacture dairy products therefrom shall be withheld until such time as the plant qualifies for a license. The plant will be charged for mileage expended by the Department for any subsequent visits required for certification of the plant. Each completed Plant Inspection Report Form shall be left at the plant and a copy shall be kept by the Department.

D. Issuance of License.

1. Dairy Plants.

The Department shall license dairy plants that meet the specifications of Sections R70-320-13, R70-320-15 and R70-320-16 based upon the inspection procedure described in Section R70-320-13. The license certification shall be posted conspicuously at the plant. The license shall authorize the plant to test, purchase, and receive milk for manufacturing purposes and to manufacture dairy products therefrom, in compliance with the applicable provisions of the Utah Dairy Act and the rules and regulations issued pursuant thereto.

2. Milk Graders and Bulk Milk Haulers.

The Department shall license milk graders and bulk milk haulers who meet the requirements prescribed by the Department. The licenses of milk graders and bulk milk haulers shall authorize them to grade, accept, and reject raw milk in accordance with the provisions of Section R70-320-6.

E. Expiration, Suspension, and Revocation of License.

Licenses shall expire and become renewable each year the 31st of December, unless revoked earlier, and no license shall be transferable. If at any time an inspector determines that a licensed plant does not meet the requirements for licensing, he may allow a reasonable probationary period for the operator to bring his plant within the requirements for licensing.

If at the end of this time the plant does not meet the licensing requirements, the Department may revoke the plant license. The Department may suspend or revoke licenses of bulk milk haulers for any violation of these rules or Title 4, Chapter 3. An opportunity for a hearing shall be provided any licensee before suspension or revocation of this license.

F. Reinstatement.

If, after a period of withholding, probation, or revocation of a plant license, the operator makes the necessary corrections at the plant, he may apply to the Department for re-inspection and reinstatement. When the compliance officer determines that requirements for licensing have been met, the Department shall issue a license to the plant. The reinstatement of licenses for milk graders and bulk milk haulers which have been suspended or revoked shall be made only after satisfying the Department of their qualifications.

R70-320-15. Records Required to be Kept by Plants.

A. Availability.

All records required to be kept by plants shall be available for examination by the Department at all reasonable times.

B. Farm Certification Report Forms.

A copy of completed Farm Certification Report Forms shall be kept on file at the plant for at least 24 months.

C. Milk Quality Test Records.

Accurate records listing the results of quality tests on each producer's milk shall be kept on file at the plant for at least 12 months.

D. Water Supply Test Records.

The results of all plant water supply tests shall be kept on file at the plant for at least 12 months.

E. Laboratory Control Test Records.

Records of all laboratory control tests shall be kept on file at the plant for at least 12 months.

F. Pasteurization Recorder Charts.

Recorder charts showing the pasteurization record for each day shall be appropriately marked with the name of the product, date, and signature of the operator. The charts shall be kept on file at the plant for at least three months.

R70-320-16. Personnel Cleanliness and Health.

A. Cleanliness.

Plant employees shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking, or otherwise soiling their hands. They shall keep their hands clean and follow good hygienic practices while on duty. Expectorating or use of tobacco in any form shall be prohibited in rooms and compartments where milk or dairy products are unpacked or exposed. Clean white or light colored washable outer garments and caps (paper caps or hairnets are acceptable) shall be worn by all persons engaged in handling milk or dairy products.

B. Health.

(1) No person afflicted with a communicable disease shall be permitted in any room or compartment where milk or dairy products are prepared, processed, or otherwise handled. No person who has a discharging or infected wound or sore, or lesion on hands, arm or other exposed portions of the body shall work in any plant processing or packaging rooms or in any capacity resulting in contact with milk or dairy products including dairy farms and bulk milk haulers.

(2) An employee returning to work following illness from a communicable disease shall have a certificate from his attending physician to establish proof of complete recovery.

R70-320-17. Transportation of Raw Milk.

A. Transportation of Milk.

Vehicles used for the transportation of milk shall be of the enclosed type, constructed and operated to protect the product from extreme temperatures, dust, or other adverse conditions, and they shall be kept clean.

B. Transport Trucks.

1. Construction.

Transport tanks shall be stainless steel lined and so constructed that the lining will not buckle, sag, or prevent complete drainage. All milk contact surfaces shall be smooth, easily cleaned, and maintained in good repair. The pump and hose cabinet shall be fully enclosed with tight-fitting doors. New and replacement transport tanks shall meet the applicable 3-A Sanitary Standards for Milk Transport Tanks.

2. Transfer of Milk to Transport Tank.

Milk shall be transferred from farm bulk tanks to transport tanks through stainless steel piping or approved tubing under sanitary conditions. This sanitary piping and tubing shall be clean and capped when not in use.

3. Cleaning and Sanitizing.

A covered or enclosed washing dock and other facilities shall be available for all plants that receive or ship milk in tanks. Milk transport tanks, sanitary piping, fittings, and pumps shall be cleaned and sanitized at least once each day, after use; provided that, if they are not to be used immediately after emptying a load of milk, they shall be washed promptly after use and given bactericidal treatment immediately before use. Whenever a milk tank truck has been cleaned and sanitized as required by the regulatory agency, it shall bear a tag, or a record shall be made showing the date, time, place and signature of the employee or contract hauler doing the work unless the truck delivers to only one receiving unit where responsibility for cleaning and sanitizing can be definitely established without tagging. The tag shall not be removed until the tank is again washed and sanitized.

4. Transportation Trucks, Tanks, and Accessories.

The transportation truck, tank and accessories shall be used for no other purpose than the handling of milk unless such use is approved by the Department.

R70-320-18. Transport Tanks, Operators.

A. All milk haulers must possess a permit issued by the Department. A candidate or substitute milk hauler is required to obtain a permit within ten days from the date they commence hauling operations. The ten day period is for training and observation to provide the Department and company officials with an opportunity to check the hauler's pickup technique and observe the degree to which he is following required pickup practices. Training may take the form of instruction in pickup technique or may include a required period of observation apprenticeship in which the candidate accompanies a permittee in the performance of his duties. Persons whose milk hauling responsibility is limited to transporting properly collected and packaged milk samples to a laboratory are not required to obtain or possess a milk hauler permit.

1. An examination may be administered at the conclusion of the ten day period and candidates failing the test will be denied permits until indicated deficiencies are corrected.

2. Drivers shall be qualified to efficiently carry out the procedures necessary for the sanitary transfer of milk from the farm tank to the dairy plant. All milk haulers shall be subject to such examination as the Department may prescribe by rule in order to receive and retain such permit. The fee for the permit shall be established in accordance with title 4-2-2 UCU and renewed annually.

B. The milk line shall be passed through a special port opening through the milkhouse wall with care to prevent contact with the ground. The port opening shall be closed when not in use.

C. It shall be the responsibility of the milk hauler to assure himself that, in the event the processor washes and sanitizes the truck, the operation has been adequately performed, and that prior to use, the truck tank has been properly sanitized with an approved sanitizer. In the event it is his responsibility to sanitize the truck tank, he shall do so with a solution of proper strength.

D. The milk hauler shall wash his hands immediately before taking a measurement and/or sample of the milk.

E. The milk shall be observed and checked for abnormalities or adulterations, and all abnormal or adulterated milk shall be rejected.

F. Drivers shall maintain a clean, neat, personal appearance and take measurements and collect milk samples for analysis in a sanitary manner using properly identified clean containers. All sampling procedures shall follow standard methods.

G. The following are the procedures for picking up bulk milk.

1. Take and record the tank reading. (If the tank is agitating when the hauler arrives, let it continue for five minutes before taking the butterfat sample. Then turn off the agitator and wait until the milk is quiescent before taking measurement.) Note: Cleanliness and dryness are essential to accurate readings. The rod must be warm enough so that moisture from the atmosphere will not condense on the rod after it has been dried or dusted, prior to inserting it into a tank to make a

reading of the liquid level.

2. Turn on the agitator and agitate at least five minutes before taking a sample.

3. While tank is agitating, record temperature and time and hook up the hose and electricity to the truck.

4. While agitator is running, take sample from three positions in tank center and both ends. Collect quality samples in same manner.

5. Shut off agitator and pump out tank.

6. Rinse tank and accessories free of milk with clean water immediately after emptying and disconnecting tubing.

H. After the milk is pumped to the transportation tank the milk conductor tubing shall be capped and returned to the vehicle storage cabinet. Care shall be taken to prevent contamination of the milk tubing.

R70-320-19. Supervision.

A. Regulatory Agency. The Department to insure compliance with the provisions of these rules shall:

1. Make periodic examinations of milk from a representative number of producers at each plant to determine whether the milk is being graded and tested in accordance with the applicable provisions of Section R70-320-6.

2. Examine the quality records of transfer producers at each plant periodically and when necessary determine the acceptability of such producer's milk.

3. Make periodic farm inspections and compare the results of such inspections with the completed Farm Certification Report Forms on file at the plant to determine whether the fieldmen are making proper inspections and reports.

4. Periodically examine the completed Farm Certification Report Forms and milk quality test records on individual producers at each plant.

5. Periodically inspect plant premises, buildings, equipment, facilities, operations, and sanitary practices.

6. Assist plant management, laboratory and field staffs with educational programs among producers relating to quality improvements of milk.

7. Perform such other services and institute such other supervisory procedures as may be necessary to ensure compliance with the provisions of these rules.

KEY: dairy inspections, raw milk
January 29, 2013 4-2-2(1)(j)
Notice of Continuation January 12, 2017 4-3-2

R70. Agriculture and Food, Regulatory Services.
R70-360. Procedure for Obtaining a License to Test Milk for Payment.
R70-360-1. Authority.

A. Promulgated Under the Authority of Section 4-3-2.

B. Scope: This rule outlines the requirements that are necessary in order to obtain a license to test milk for payment.

R70-360-2. License Requirements.

A. This license is issued to an individual and is not transferable.

B. Licenses shall expire on December 31 of each year.

C. In order to obtain a license to test milk for payment, an individual must demonstrate testing proficiency by successfully completing a series of split samples provided by the department. After an individual meets the criteria for certification, an application will be filled out and submitted along with payment of a license fee, determined by the department pursuant to Subsection 4-2-2(2), to the department for issuance of a license.

R70-360-3. Renewal Procedure.

Split samples may be made available to licensed testers periodically to check for competency in testing. The Department will provide the results to the tester. The split sample results will be evaluated. If a tester does not achieve accurate results, the Department will work with that tester to correct the problem.

R70-360-4. License Suspension or Revocation.

If any provision of this rule or the Utah Dairy Act is violated, the tester's license may be subject to suspension or revocation after due process of a hearing.

KEY: food inspection
1992 4-3-2
Notice of Continuation January 12, 2017

R70. Agriculture and Food, Regulatory Services.
R70-530. Food Protection.
R70-530-1. Authority and Purpose.

(1) Authority.

This rule is promulgated under the authority of Section 4-5-17 UCA.

(2) Purpose.

This rule shall be liberally construed and applied to promote its underlying purpose of safeguarding public health and providing to consumers food that is safe, unadulterated, and honestly presented.

R70-530-2. Scope.

This rule establishes definitions; sets standards for management and personnel, food operations, equipment, and facilities; and provides for food establishment plan review, inspection, and employee restriction. It shall be used to regulate bakeries, grocery and convenience stores, meat markets, food and grain processors, warehouses and any other establishment meeting the definition of a food establishment.

R70-530-3. Incorporation by Reference.

(1) The food standards, labeling requirements and procedures as specified in 21 CFR, 1 through 200, 2013 edition, 40 CFR 185, April 17, 2012 edition, and 9 CFR 200 to End, January 1, 2012 edition, are incorporated by reference.

(2) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 2013, Chapters 1 through 8 with the exclusion of Subparagraphs 8-302.14(C)(1),Paragraphs 8-302.14(D) and (E), Paragraph 8-304.11(K), Paragraph 5-203.15(B), Paragraphs 5-402.11(B), (C) and (D); and exclusion of Section 8-905.40, Subparagraphs 8-905.90(A)(1) and (2), Section 8-909.20, Subparagraphs 8-911.10(B)(1) and (2), Annex 1 comprising Parts 8-6 through 8-9 with the exclusion of Section 8-905.40, Subparagraphs 8-905.90(A)(1) and (2), Section 8-909.20, Subparagraphs 8-911.10(B)(1) and (2); and Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402 are adopted and incorporated by reference, and with the following additions or amendments:

(a) In Paragraph 1-201.10(B), insert a new subparagraph after subparagraph (b) in subparagraph (2) under "Food Establishment" to read: "(c) A catering operation which is a business entity that operates from a permitted food establishment that contracts with a client for food service to be provided to a client, the client's guests and/or customers at a different location. A catering operation may cook or perform final preparation of foods at the service location. A catering operation does not include routine services offered at the same location, or meals that are individually purchased with the exception of cash bars."

(b) In paragraph-201.10(B), insert a new subparagraph after subparagraph (2) under "Core Item" to read: "(3) "Core Item" will also be referred to as "non-critical" in the state rule."

(c) In Paragraph 1-201.10(B) under "Priority Item", replace the semicolon and the word "and" at the end of subparagraph (2) with a period; replace the period at the end of subparagraph (3) with "; and"; and insert a new subparagraph after paragraph (3) to read: "(4) 'Priority Item' will also be referred to as 'critical 1' in the state rule."

(d) In paragraph 1-201.10(B) under "Priority Foundation Item," replace the semicolon and the word "and" at the end of subparagraph (2) with a period; replace the period at the end of subparagraph (3) with,"; and"; and add a new subparagraph after subparagraph (3) to read: "(4) 'Priority foundation item' will also be referred to as 'critical 2' in the state rule."

(e) After subparagraph 2-102.11 (17), add a new section to read: "2-102-12 Food Employee Training. Food employees shall be trained in food safety as required under 26-15-5 and shall hold a valid food handler's permit issued by a local health department."

(f) Amend Paragraph 3-201.16 (A) to read: "Except as specified in paragraph (B) of this section, mushroom species picked in the wild shall not be offered for sale or service by a food establishment."

(g) After Paragraph 3-501.17 (G), add a new paragraph to read: "(H) A date marking system that meets the criteria stated in paragraph (A) of this section shall use one of two types of date marks, and that date mark must be used consistently throughout the food establishment. The date mark will either be of the date: (1) before which food must be used as specified in paragraph (A) of this section; or (2) be the date of Day 1."

(h) Amend Subparagraph 3-501.19(B)(2) to read: "(2) Only one time marking scheme may be used, and it must be used consistently throughout the food establishment. The food shall be marked with either: (a) the time the food is removed from temperature control; or (b) the time before which the food shall be -cooked and served, served at any temperature if ready-to-eat, or discarded."

(i) After Paragraph 4-204.123(B), add a section to read: "4-204.124 Restraint of Pressurized Containers.Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over."

(j) At the end of section 5-101.12, add: "The process shall be in accordance with the American Water Works Association (AWWA) C651-2005 for disinfection and testing."

(k) Replace section 5-202.13, with the following: "(A) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is greater than three times the diameter of the inlet, or greater than four times for intersecting walls, an air gap between the water supply inlet and the floor level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 millimeters (1 inch). (B) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is less than three times the diameter of the inlet, or less than four times for intersecting walls, an air gap between the water supply inlet and the floor level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least three times the diameter of the water supply inlet and may not be less than 38 millimeters (1.5 inches)."

(l) Amend Paragraph 5-203.15(A) to read: "If not provided with an air gap as specified under Section 5-202.13, an American Society of Safety Engineers (ASSE) 1022 dual check valve with an intermediate vent shall be installed upstream from a carbonating device and downstream from an copper in the water supply line."

(m) Amend Paragraph 5-402.11(A) to read: "A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are place."

(n) Amend section 8-103.11 to add:

(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active managerial control of this risk factor at all times.

(o) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).

(p) Amend Paragraph 8-304.10(A) to read:

(A) Upon request, the regulatory authority shall provide a copy of the Utah Food Protection Rule according to the policy

of the local regulatory agency.

(q) Amend subparagraph 8-401.10(A)to read: "(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months. (B)(2) to read: "The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction".

(r) Add Paragraph 8-501.10(C) to read: (C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703.

(s) Amend section 8-601.10 to read: Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions. Enforcement of this Rule shall be in accordance with title 4-2-2(J), Title 4-2-12, and R70-201.

(t) Add "8-7 Penalties; 8-701.10 State Construction Code

All parts of the food establishment shall be designed, constructed, maintained, and operated to meet the standards of the state construction code adopted by the Utah Legislature under Title 15A UCA. A copy of the construction code is available at the office of the local building inspector."

(3) All references to food that requires time or temperature control for safety, TCS, in this rule are equivalent to references in past editions of the U.S. Public Health Service, Food and Drug Administration, Food Code to potentially hazardous food, PHF.

KEY: food, inspections
February 2, 2016 **4-5-17**
Notice of Continuation January 12, 2017

R70. Agriculture and Food, Regulatory Services.
R70-550. Utah Inland Shellfish Safety Program.
R70-550-1. Authority.

This rule is promulgated by the Division of Regulatory Services, within the Department of Agriculture and Food under authority of Section 4-5-17.

R70-550-2. Adopt by Reference.

The National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish: 2013 Revision published by the United States Public Health Service/Food and Drug Administration, is hereby adopted and incorporated by reference within this rule.

KEY: interstate shell fish safety
June 23, 2016 4-5-17
Notice of Continuation January 12, 2017

R70. Agriculture and Food, Regulatory Services.
R70-560. Inspection and Regulation of Cottage Food Production Operations.
R70-560-1. Authority and Purpose.

(1) Authority. Promulgated under authority of Title 4, Chapter 5, Section 9.5, Utah Code Annotated.

(2) Purpose. The Department shall adopt rules pursuant to Title 63G-4, Utah Administrative Rulemaking Act , as necessary to protect public health and ensure a safe food supply.

(3) Adopted and Referenced. The Utah Department of Agriculture and Food hereby adopts and references the applicable provisions of the Food Protection Rule, Utah Administrative Code Rule R70-530 issued by The Utah Department of Agriculture and Food, with specific exemptions as provided by Section 4-5-9.5, Utah Code Annotated.

R70-560-2. Definitions.

The following definitions apply in the interpretation and application of this rule:

(1) "Department" means the Utah Department of Agriculture and Food.

(2) "Food Processing Plant" does not include a Cottage Food Production Operation.

(3) "Section 26A-1-114" means Title 26A, Chapter 1, Section 114, Utah Code Annotated.

(4) "Section 26-15a-102" means Title 26, Chapter 15a, Section 102, Utah Code Annotated.

R70-560-3. Approval of Food.

(1) Prior to producing a food, the operator of a cottage food production operation shall:

(a) At the discretion of the Department, provide written confirmation from a Department approved food laboratory or process authority that the food is not potentially hazardous; and

(b) Receive approval from the Department to produce the food.

(2) A cottage food production operation may only sell Department approved foods to the public.

(3) When food includes fruits or vegetables grown by the operator of a cottage food production operation, the operator must have a current private pesticide applicator certification issued by the Department under Title 4, Chapter 14, Utah Code Annotated.

R70-560-4. Production Requirements.

(1) A cottage food production operation shall:

(a) Ensure that each operator holds a valid food handler's permit;

(b) Use finished and cleanable surfaces;

(c) Maintain acceptable sanitary standards and practices;

(d) Provide separate storage from domestic storage, including refrigerated storage;

(e) Provide for annual water testing if not connected to a public water system; and

(f) Keep a sample of each food for 14 days. The samples shall be labeled with the production date and time.

(2) A cottage food production operation shall comply with R70-530, except that it shall not be required to:

(a) Have commercial surfaces such as stainless steel counters or cabinets;

(b) Have a commercial grade sink, dishwasher or oven;

(c) Have a separate kitchen; or

(d) Submit plans and specifications before construction or remodeling;

(3) A cottage food production operation is prohibited from all of the following:

(a) Conducting domestic activities in the kitchen when producing food;

(b) Allowing pets in the kitchen;

(c) Allowing free-roaming pets in the residence;

(d) Washing out or cleaning pet cages, pans and similar items in the kitchen; and

(e) Allowing entry of non-employees into the kitchen while producing food.

(4) A cottage food must be prepared by following the recipe used to prepare the food when it was submitted for the approval testing required in Subsection R70-560-3(1). When a process authority has recommended or stipulated production processes or criteria for a food, these must be followed when the food is produced. The recipe and process authority recommendations and stipulations shall be available in the facility for review by the department.

R70-560-5. Inspections, Registration and Investigations.

(1) The Department shall inspect a cottage food production operation:

(a) Prior to issuing a registration for the cottage food production operation; and

(b) If the Department has reason to believe the cottage food production operation is in violation of this chapter, or administrative rule, adopted pursuant to this section, or is operating in an unsanitary manner.

(2) A cottage food production operation must register with the Department as a food establishment pursuant to Rule R70-540 and pay the required fee.

(3) Notwithstanding the provisions of Rule R70-540, the Department shall issue a registration to an applicant for a cottage food production operation if the applicant:

(a) Applies for the registration;

(b) Passes the inspection required by Subsection R70-560-5(1);

(c) Pays the fee required by the department; and

(d) Meets the requirements of this section.

(4) The registration issued under Rule R70-540 shall be displayed at the cottage food production operation. A copy of the registration shall be displayed at farmers markets, roadside stands and other places at which the operator sells food from a fixed structure that is permanent or temporary and which is owned, rented or leased by the operator of the cottage food production operation.

R70-560-6. Cottage Food Labeling.

(1) A cottage food production operation shall:

(a) Properly label all foods in accordance with state and federal law, including 21 CFR 1 - 199;

(2) Label information shall include:

(a) The name specified by regulation or, in the absence thereof, the name commonly used for that food or an adequately descriptive name;

(b) A list of ingredients in descending order of predominance by weight, when the food is made from two or more ingredients;

(c) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient;

(d) An accurate declaration of the net quantity of contents;

(e) The name and place of business of the cottage food production operation;

(f) The telephone number of the cottage food production operation;

(g) Nutritional labeling unless the product qualifies for an exemption; and

(h) The words "Home Produced" in bold and conspicuous 12 point type on the principal display panel.

R70-560-7. Food Distribution and Storage.

(1) Food shall be obtained from sources that comply with the law.

(2) An ingredient used in a cottage food production operation, that is from a hermetically-sealed container, must have been produced at a food processing plant that is regulated by the appropriate food regulatory agency with jurisdiction over the plant.

(3) A food offered for sale shall be safe, unadulterated, and honestly presented.

(a) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

(b) Food or color additives, colored over-wraps, or lights may not be used to misrepresent the true appearance, color, or quality of the food.

(c) Food may not contain unapproved food additives, additives in unsafe amounts, or additives that exceed the amount necessary to achieve the needed effect.

(d) Food shall be protected from contamination, including contamination from chemical and pesticide hazards.

(4) Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

(5) Food that is unsafe, adulterated, or not honestly presented shall be discarded.

(6) Except for unprocessed raw agricultural products, foods shall not be displayed or stored on the ground.

(7) Ingredients used in a cottage food shall be in good condition, unspoiled and otherwise unadulterated. Ingredients cannot be used past the expiration date on the container if produced at a regulated food processing facility. Other ingredients may not be used if over 9 months old.

R70-560-8. Regulatory Jurisdiction.

(1) Notwithstanding the provisions of Section 26A-1-114, a local health department:

(a) Does not have jurisdiction to regulate the production of food at a cottage food production operation, operating in compliance with this section, as long as the products are not offered to the public for consumption on the premises; and

(b) Does have jurisdiction to investigate a cottage food production operation in any investigation into the cause of a food born illness outbreak.

(2) A food service establishment as defined in Section 26-15a-102, may not use a product produced in a cottage food operation as an ingredient in any food that is prepared by the food establishment and offered by the food establishment to the public for consumption.

R70-560-9. Enforcement and Penalties.

A violation of any portion of this rule may result in civil or criminal action pursuant to Sections 4-2-12, 14 and 15, Utah Code Annotated.

KEY: food safety, cottage foods, food establishment registration, inspections
July 25, 2008 4-5-9.5
Notice of Continuation January 12, 2017

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

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

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

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

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

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

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

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

R81-3-2. Change of Location.

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

R81-3-3. Bonds.

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

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

R81-3-4. Change of Package Agent.

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

R81-3-5. Reserved.

Reserved.

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

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

(2) Application of Rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Merchandise purchased by catering services.

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

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

R81-3-7. Warning Sign.

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

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

All package agencies shall accept only four forms of

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

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

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

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

(4) A current valid passport.

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

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

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

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

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

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

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

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

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

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

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

R81-3-10. Non-Consignment Inventory.

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

R81-3-11. Application.

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

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

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

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

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

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

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

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

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

(3) Type 2 and 3 package agencies shall:

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

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

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

R81-3-13. Operational Restrictions.

(1) Hours of Operation.

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

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

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

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

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

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

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

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

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

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

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

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

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

R81-3-14. Type 5 Package Agencies.

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

(2) Authority. 32B-2-504, 605; 32B-5-303.

(3) Definitions. Reserved.

(4) Application of Rule.

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

(b) The package agency may only sell products produced by the manufacturing licensee and may not carry the products of other alcoholic beverage manufacturers. For the purpose of this rule, products produced by the manufacturing licensee include products that would be assessed tax for sale as determined by 27 CFR Parts 19, 24 and 25.

(c) The product produced by the manufacturing licensee and sold in the type 5 package agency need not be shipped from the winery, distillery, or brewery to the department and then back to the package agency. The bottles for sale may be moved directly from the manufacturer's storage area to the package agency provided that proper record-keeping is maintained in a form and manner as required by the department.

(d) Records required by the department shall be kept current and available to the department for auditing purposes for at least three years.

(e) The package agency shall submit to the department a completed monthly sales report which specifies the variety and number of bottles sold from the package agency in a form and manner as required in the package agency contract.

(d) Direct deliveries to licensees are prohibited. Products must be purchased and picked up by the licensees or their staff at the Type 5 package agency. Sales to the manufacturer's retail licenses may be transported from the manufacturer's storage area directly to the retail licensed premise provided that a record is maintained showing a sale from the type 5 package agency to the retail licensee at the retail price.

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

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

R81-3-15. Refusal of Service.

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

R81-3-16. Minors on Premises.

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

R81-3-17. Consignment Inventory Package Agencies.

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

(2) Application of the Rule.

(a) Consignment Inventory.

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

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

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

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

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

(b) Payments.

(i) All agencies receiving shipments or transfers are required to have an ACH (Automated Clearing House) payment

system set up with the department.

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

(iii) Agents will remit payment to the department on the 19th or next available working day of the following month after the last statement was generated. Payment will be for the statement total. Payment will be automatically drawn through the ACH process on the due date unless prior arrangements have been made between the agent and the department.

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

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

(c) Transfers.

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

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

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

(d) Credit and Debit Card Credits.

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

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

(e) Audits.

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

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

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

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

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

(2) Application of Rule.

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

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

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

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

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

R81-3-19. Reserved.

Reserved.

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

(1) A Type 4 package agency that sells liquor other than in a sealed container (i.e. by the drink) as part of room service, shall dispense liquor in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems).

(2) A Type 4 package agency located in a hotel or resort facility that has a retail license or sublicense may provide room service of liquor in other than a sealed container through the dispensing outlet of the retail license or sublicense under the following conditions:

(a) point of sale control systems must be implemented that will record the amounts of alcoholic beverage products sold by the retail license or sublicense on behalf of the Type 4 package agency;

(b) the alcoholic beverage product cost must be allocated to the Type 4 package agency on at least a quarterly basis pursuant to the record keeping requirements of Section 32B-5-302;

(c) dispensing of alcoholic beverages from a retail license or sublicense location may not be made at prohibited hours pertinent to that license or sublicense type;

(d) A Type 4 package agency held by a resort licensee that operates seven days a week, 24 hours per day, must have a separate dispensing outlet for use during the times that a sublicense is not allowed to sell liquor.

KEY: alcoholic beverages

January 3, 2017	**32B-2-202**
Notice of Continuation May 2, 2016	**32B-2-601(4)**
	32B-2-605(13)(b)

R81. Alcoholic Beverage Control, Administration.
R81-4. Retail Licenses.
R81-4-1. Authority.
Reserved.

R81-4-2. Purpose.
Reserved.

R81-4-3. Definitions.
Pursuant to the authority and purpose given in 32B-6-202, 32B-8b-102(2), and 32B-1-102(46) the commission shall define the following as such:
(1) "Hotel" means a commercial lodging establishment:
(a) that offers temporary sleeping accommodations for compensation;
(b) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;
(c) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and
(d) that has at least 1000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 75 people, provided that in cities of the third, fourth or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

KEY: alcoholic beverages
January 3, 2017 **32B-8b-102(2)**
32B-2-202
32B-1-102(46)

R81. Alcoholic Beverage Control, Administration.
R81-8. Manufacturing and Related Licenses.
R81-8-1. Purpose.
Reserved.

R81-8-2. Authority.
(1) This rule is enacted pursuant to Subsections 32B-2-202, 32B-11-208(9), and 32B-11-210(7) and (12).

R81-8-3. Definitions.
(1) "Substantial Food." RESERVED.
(2) "Educational Information" means a presentation of information whose primary purpose is imparting knowledge related to the history, culture, significance, agriculture, manufacture, flavor profiles and/or the effects of alcohol.

R81-8-4. Application Guidelines.
(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a manufacturing license until:
(a) A complete application including all documents and supplemental materials listed on the department's application checklist have been submitted to the department.
(b) the department has inspected the manufacturer premise; and
(c) an investigation is conducted and a recommendation can be made as required by 32B-11-206.
(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.
(b) An incomplete application will be returned to the applicant.
(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-8-5. Out of State Business.
(1) Purpose. Pursuant to 32B-11-201(4), brewers located outside the state must obtain a certificate of approval from the department before selling or delivering beer containing an alcohol content of less than 4% alcohol by volume to licensed beer wholesalers in this state, or if a small brewer, to licensed beer wholesalers or retailers in this state. These certificates must be renewed annually.
In addition to issuing certificates of approval to brewers who actually produce the beer, the department has also issued certificates to (1) importers that hold federal permits, and have the contractual rights to distribute and market beer for foreign breweries; and (2) marketing agents that distribute and market beer for domestic breweries. The department has also allowed brewers with a certificate of approval to market the products on behalf of other brewers under that certificate. However, this has resulted in a loss of direct regulatory authority over the breweries that actually produce the beer.
This rule ensures that each producer of beer obtain its own certificate of approval to allow its beer to be sold or delivered in this state.
(2) Application of Rule.
(a) A certificate of approval to sell or deliver beer in this state under 32B-11-201(4) may be issued only to the company that is ultimately responsible for producing the beer. The company holding the certificate may not allow another brewery to sell or deliver beer to this state under the certificate holder's certificate. A certificate of approval may not be issued to any third party such as an importer or marketing agent that does not actually manufacture or produce alcoholic beverages.
(b) This rule does not preclude the company that holds the certificate of approval from having its brand of beer produced by another brewery under contract under the brand name of the certificate holder's company. However, the certificate holder is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the certificate holder.
(c) A distillery or winery that has beer produced for it by a brewery under contract under the distillery's or winery's brand name is deemed to be a "brewery" for purposes of 32B-11-201(4), and may be issued a certificate of approval. However, the distillery or winery is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the distillery or winery that holds the certificate.

KEY: alcoholic beverages
January 3, 2017 **32B-2-202**
Notice of Continuation May 2, 2016 **32B-11-208(9)**
32B-11-210(7) and (12)

R105. Attorney General, Administration.
R105-1. Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services.
R105-1-1. Purpose and Authority.

(1) The purpose of this rule is to provide the requirements for procurements that are managed by the Attorney General, including the hiring of Outside Counsel, expert witnesses, and litigation support services.

(2) This rule is adopted pursuant to authority granted by the Utah Procurement Code and Section 67-5-32(1)(a), including authority to manage procurement of procurement items directly or by delegation of the Chief Procurement Officer of the Division of Purchasing of the Department of Administrative Services.

(3) The Attorney General may procure any procurement item and exercise any action authorized by the Procurement Code and this Rule.

R105-1-2. Definitions.

Terms in this Rule R105-1 shall be as defined in Title 63G, Chapter 6a, Utah Procurement Code. The definitions in Rule R33-1 also apply to this Rule R105-1, except in case of conflict, the definitions in this Rule R105-1 shall control. Additional definitions are provided below.

(1) "Agency" is as defined in Section 67-5-3.

(2) "Attorney General" means the Attorney General of the State of Utah, or the Attorney General's designee.

(3) "Contingent fee case" means a legal matter for which legal services are provided under a contingent fee contract.

(4) "Contingent fee contract" means a contract for legal services under which the compensation for legal services is a percentage of the amount recovered in the legal matter for which the legal services are provided.

(5) "Expert witness" means a person whose knowledge, skill, experience, training or education in a scientific, technical, or other specialized area, would enable the person to give testimony under the Utah Rules of Evidence, Rule 702.

(6) "Legal matter" means a legal issue or administrative or judicial proceeding within the scope of the attorney general's authority.

(7) "Litigation Support Services" includes goods, services, software, or technology.

(8) "Outside Counsel" means an attorney or attorneys who are not, or a law firm whose attorneys are not, employed by the Attorney General's office, pursuant to Section 67-5-7 et seq., which the Attorney General hires, pursuant to Section 67-5-5, to represent, provide legal advice, or counsel to an agency of the State. "Outside Counsel" may or may not be designated as "Special Assistant Attorney General", as the Attorney General determines.

(9) "Procurement item" or "Procurement items" is as defined in Section 63G-6a-103.

(10) "Securities class action" means an action brought as a class action alleging a violation of federal securities law, including a violation of the Securities Act of 1933, 15 U.S.C. Sec. 77a et seq., or the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.

(11) "Small purchase" means a purchase under Rule R105-1-6.

(12) "Sole source" means a determination by the Attorney General, in writing, that the sole source requirements of the Utah Procurement Code and this Rule have been met.

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

R105-1-3. General Process.

(1) This rule applies to the procurement and appointment of Outside Counsel, expert witnesses, litigation support services, litigation related consultants, as well as management software and services by the Attorney General.

(2) In order to properly fulfill the responsibilities of the Office, the procurement of Outside Counsel, expert witnesses, litigation support services, litigation related consultants, and management software and services may require that public notice of a particular procurement not be provided. Public notice of a procurement may only be waived in the event of an emergency procurement or as authorized by the Procurement Code.

(3) The Attorney General may select Outside Counsel, expert witnesses, professional litigation support services, litigation related consultants, as well as management software and services pursuant to any authorized process under the Utah Procurement Code. In any such selection process, it may be specified that the Outside Counsel is responsible for providing the expert witnesses or other litigation goods and services through the selection process for Outside Counsel and pursuant to the contract provisions with the Attorney General.

(4) The Attorney General shall comply with the Utah Procurement Code.The Attorney General shall comply with Rule R33 only when necessary to comply with Utah Code, except when Rule R33 is in conflict with or preempted by this Rule R105-1.

(5) The Attorney General may, in a multistate case involving other states as parties aligned with Utah, elect to enter into a fee sharing agreement in which each state contributes to a litigation fund that is used to purchase expert witnesses and/or other litigation support services including litigation related consultants, as well as management software and services, or through a similar group procurement agreement. The agreement shall be treated collectively as a sole source procurement of all goods and services purchased under the terms of the agreement.

(6) The Attorney General may, in a multistate case involving other states as parties aligned with Utah, select Outside Counsel jointly with some or all of the other states as a sole source procurement.

(7) The Attorney General's office shall ensure that the procurement of outside counsel is supported by a determination by the Attorney General that the procurement is in the best interests of the state, in light of available resources of the Attorney General's office.

(8) The Attorney General's office shall provide for the fair and equitable treatment of all potential providers of outside counsel, expert witnesses, and other litigation support services including, litigation related consultants, as well as management software and services consistent with the limitations and procedures set forth in this Rule R105-1.

(9) The Attorney General's office shall ensure that fees for outside counsel, whether based on an hourly rate, contingency fee, or other arrangement, are reasonable and do not exceed industry standards.

(10) The procurement and requirements regarding a Contingency Fee Contract must meet the requirements of this Rule R105-1 and the applicable provisions of the Utah Code.

R105-1-4. Available Procurement Processes.

Prior to any procurement for legal services, the Attorney General shall determine which process under the Utah Procurement Code shall be used.

R105-1-5. Request for Proposals Process.

(1) The Request for Proposals shall contain, in addition to the requirements of Rule R33-7-102, at a minimum, the following information:

(a) A description of the project.

(b) Fee arrangements.

(c) The persons or entities being sought in the procurement, including whether an individual person, firm or association of firms may respond.

(d) The qualification criteria and the relative importance

of the criteria. The Attorney General shall request qualifications from outside counsel being considered to provide services under a contingent fee contract unless the Attorney General:

(i) determines that requesting qualifications is not feasible under the circumstances; and

(ii) sets forth the basis for this determination in writing.

(e) Examples of criteria include:

(i) Identification by name and experience of the proposed service provider(s);

(ii) A description of the duties and responsibilities of each person providing the service; and

(iii) The ability of the persons providing the service to meet the needs of the project, including the consideration of any association with other persons, expert witnesses or firms;

(f) The Contractual Requirements, which may be accomplished by including a copy of the contract.

(g) A request for a conflicts analysis, including potential conflicts of interest or other related matters concerning the offeror's ability to ethically perform the requested services.

(2) In any selection process for outside counsel, it may be specified that the outside counsel is responsible for providing the expert witnesses or other litigation goods and services including litigation related consultants, as well as management software and services through the outside counsel's selection process and pursuant to the contract provisions with the Attorney General.

(3) Minimum scores for any of the criteria may be established.

R105-1-6. Small Purchases.

(1) The maximum thresholds for small purchases shall be as described in this Rule R105-1-6.

(2) For Outside Counsel, litigation related consultants, management software and services, as well as expert witnesses, the small purchase maximum threshold is $250,000 per contract. A written justification statement shall be filed explaining the reason(s) for selection of the contractor.

(3) For the selection of litigation support services that are not included under Rule R105-1-6(2), including but not limited to court reporting, litigation related copying and printing services, the small purchase maximum threshold is $50,000 per contract. For a purchase of litigation support services that are not included under Rule R105-1-6(2) between $2,500 and $50,000, a minimum of two quotes shall be obtained or there shall be developed a rotation system of qualified persons or firms that meet the qualifications for the service. For any purchase of litigation support services that are not included under Rule R105-1-6(2) of $2500 or less, a direct award may be made.

(4) Under Section 63G-6a-408(3), a threshold stated in this Rule may be exceeded if the Attorney General or a person specifically designated in writing by the Attorney General gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.

R105-1-7. Sole Source.

Unless the Attorney General determines that a publication of a sole source shall be published, sole sourced procurement items need not be published regardless of cost.

R105-1-8. Emergency Procurements.

(1) An emergency procurement may only be used when an emergency exists as described in, and in compliance with, Section 63G-6a-803.

(2) Emergency procurements are limited to those necessary to mitigate the emergency.

R105-1-9. Confidentiality of Procurement Records.

(1) The Attorney General shall comply with Title 63G, Chapter 2, Governmental Records Access and Management Act (GRAMA).

(2) Pricing may not be classified as protected and is considered public information.

(3) An entire response to a solicitation may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the vendor removes the designation.

(4) Publicizing Awards.

(a) In addition to the requirements of Section 63G-6a-709.5, the following shall be disclosed after receipt of a GRAMA request and applicable fees:

(i) the executed contract(s) and the successful proposal(s), except for those portions that are not Public;

(ii) unsuccessful proposals, except for those portions that are not Public;

(iii) the rankings of the proposals;

(iv) the names of the members of any evaluation committee;

(v) the final scores used by the evaluation committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings; and

(vi) the written justification statement supporting the selection, except for those portions that are not Public.

(b) After due consideration and public input, the following has been determined by the Procurement Policy Board and the Attorney General's Office to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the Attorney General's Office:

(i) the names of individual scorers/evaluators in relation to their individual scores or rankings;

(ii) any individual scorer's/evaluator's notes, drafts, and working documents;

(iii) non-public financial statements; and

(iv) past performance and reference information which is not provided by the vendor and which is obtained as a result of the efforts of the Attorney General's Office. To the extent such past performance or reference information is included in the written justification statement, the justification statement is still subject to public disclosure.

(c) In regard to an Invitation for bids issued by the Attorney General's Office, the Attorney General's Office shall, on the day on which the award of a contract is announced, make available to each vendor and to the public, a notice that includes:

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

(ii) the names and the prices of each vendor to which the contract is not awarded.

R105-1-10. Special Provisions regarding Procurement of Outside Counsel.

(1) The Attorney General shall not enter into a contract for outside counsel unless the requirements of this Rule R105-1-10 are met throughout the contract period and any extensions.

(2) The Attorney General shall review the proposed fee arrangement to hire outside counsel to ensure that there is a reasonable, good faith legal basis to pursue the litigation in the interest of the citizens of the State.

(3) The Attorney General shall retain oversight and control over the course and conduct of the litigation or anticipated litigation.

(4) The Attorney General shall designate a member of the Attorney General's Office to personally oversee the litigation.

(5) The Attorney General shall retain veto power over any decisions made by outside counsel, and no lawsuit will be filed,

or party added to or served with process in any lawsuit, by outside counsel, without express written permission of the Attorney General.

(6) The Attorney General shall be apprised of, attend, and participate in all settlement offers or conferences.

(7) Decisions regarding settlement of the case shall be made by the Attorney General and not the outside counsel, provided that the Attorney General may give outside counsel a reasonable range of specific settlement authority in writing, within which outside counsel is authorized to settle the case.

(8) Written Determination regarding using a Contingency Fee Contracts. The Attorney General may not enter into a contingent fee contract with outside counsel unless the Attorney General makes a written determination that the contingent fee contract is cost-effective and in the public interest. This written determination shall:

(a) be made before or within a reasonable time after the Attorney General enters into a contingent fee contract; and

(b) include specific findings regarding:

(i) whether sufficient and appropriate legal and financial resources exist in the Attorney General's office to handle the legal matter that is the subject of the contingent fee contract; and

(ii) the nature of the legal matter, unless information conveyed in the findings would violate an ethical responsibility of the Attorney General or a privilege held by the state.

(9) Contingency Fee Limit. The Attorney General may not enter into a contingent fee contract with outside counsel that provides for outside counsel to receive a contingent fee, exclusive of reasonable costs and expenses, that exceeds:

(a) 25% of the amount recovered, if the amount recovered is no more than $10,000,000;

(b) 25% of the first $10,000,000 recovered, plus 20% of the amount recovered that exceeds $10,000,000, if the amount recovered is over $10,000,000 but no more than $15,000,000;

(c) 25% of the first $10,000,000 recovered, plus 20% of the next $5,000,000 recovered, plus 15% of the amount recovered that exceeds $15,000,000, if the amount recovered is over $15,000,000 but no more than $20,000,000; and

(d) 25% of the first $10,000,000 recovered, plus 20% of the next $5,000,000 recovered, plus 15% of the next $5,000,000 recovered, plus 10% of the amount recovered that exceeds $20,000,000, if the amount recovered is over $20,000,000; or

(e) $50,000,000.

(10) Opt-out regarding Contingency Fee Contracts.

(a) A provision of a contingent fee contract that is inconsistent with a provision of this section is invalid unless, before the contract is executed, the contingent fee contract provision is approved by a majority of the Attorney General, state treasurer, and state auditor.

(11) Exceptions regarding Contingency Fee Contracts:

(a) A contingent fee under a contingent fee contract may not be based on the imposition or amount of a penalty or civil fine.

(b) A contingent fee under a contingent fee contract may be paid only on amounts actually recovered by the state.

(c) Throughout the period covered by a contingent fee contract, including any extension of the contingent fee contract:

(i) outside counsel that is a party to the contingent fee contract shall acknowledge that the Attorney General retains complete control over the course and conduct of the contingent fee case for which outside counsel provides legal services under the contingent fee contract;

(ii) the Attorney General with supervisory authority shall oversee any litigation involved in the contingent fee case;

(iii) the Attorney General retains final authority over any pleading or other document that outside counsel submits to court;

(iv) an opposing party in a contingent fee case may contact the Attorney General directly, without having to confer with outside counsel;

(v) the Attorney General with supervisory authority over the contingent fee case may attend all settlement conferences; and

(vi) the outside counsel shall acknowledge that final approval regarding settlement of the contingent fee case is reserved exclusively to the discretion of the Attorney General.

(d) Nothing in Rule R105-1-10(11) may be construed to limit the authority of the client regarding the course, conduct, or settlement of the contingent fee case.

(12) Website Posting regarding Contingency Fee Contracts. Within five business days after entering into a contingent fee contract, the Attorney General shall post on the Attorney General's website:

(a) the contingent fee contract;

(b) the written determination under R105-1-10 (8) relating to that contingent fee; and

(c) if applicable, any written determination made under Rule R105-1-5(1)(d) relating to that contingent fee contract.

(d) The Attorney General shall keep the contingent fee contract and written determination posted on the Attorney General's website throughout the term of the contingent fee contract.

(13) Contingency Fee Contract Records. The outside counsel that enters into a contingent fee contract with the Attorney General shall:

(a) from the time the contingent fee contract is entered into until three years after the contract expires, maintain detailed records relating to the legal services provided by outside counsel under the contingent fee contract, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial records that relate to the legal services provided by outside counsel; and

(b) maintain detailed contemporaneous time records for the outside counsel's attorneys and paralegals working on the contingent fee case and promptly provide the records to the Attorney General upon request.

(14) Exemption regarding Contingency Fee Contracts. Rule R105-1-10(8) through (13) as well as Rule R105-1-11(3) do not apply to:

(a) to a contingent fee contract in existence before May 12, 2015, or to any renewal or modification of a contingent fee contract in existence before that date;

(b) to a contingent fee contract with outside counsel that the Attorney General hires to collect a debt that the Attorney General is authorized by law to collect; and

(c) with respect to a contingent fee contract with outside counsel in a securities class action in which the state is appointed as lead plaintiff under Section 27(a)(3)(B)(i) of the Securities Act of 1933 or Section 21D(a)(3)(B)(i) of the Securities Exchange Act of 1934 or in which any state is a class representative, or in any other action in which the state is participating with one or more other states:

(i) apply only with respect to the state's share of any judgment, settlement amount, or common fund; and

(ii) do not apply to attorney fees awarded to outside counsel for representing other members of a class certified under Rule 23 of the Federal Rules of Civil Procedure or applicable state class action procedural rules.

(15) Notwithstanding any other provision of this Rule R105-1-10, the solicitation for outside counsel may provide a lower fee limitation and/or provide for weights and scoring of the proposed fees in accordance with the Utah Procurement Code, which will allow for a competitive process and may provide for fees below the limitations set forth in this Rule.

R105-1-11. Transparency in Contingency Fee Contracts with Outside Counsel.

(1) Except as otherwise provided by GRAMA, applicable

law, Rules of Professional Conduct or this Rule, a copy of the executed contract with outside counsel shall be made available for public inspection in accordance with GRAMA.

(2) Any payment by the Attorney General under a contingency fee contract shall be made available for public inspection in accordance with GRAMA.

(3) After June 30 but on or before September 1 of each year, the Attorney General shall submit a written report to the president of the Senate and the speaker of the House of Representatives describing the Attorney General's use of contingent fee contracts with outside counsel during the fiscal year that ends the immediately preceding June 30.

(a) A report under Rule R105-1-11(3) shall identify:

(i) each contingent fee contract the Attorney General entered into during the fiscal year that ends the immediately preceding June 30; and

(ii) each contingent fee contract the Attorney General entered into during any earlier fiscal year if the contract remained in effect for any part of the fiscal year that ends the immediately preceding June 30.

(iii) state the name of the outside counsel that is a party to the contingent fee contract, including the name of the outside counsel's law firm if the outside counsel is an individual;

(iv) describe the nature of the legal matter that is the subject of the contingent fee contract, unless describing the nature of the legal matter would violate an ethical responsibility of the Attorney General or a privilege held by the state;

(v) identify the state agency which the outside counsel was engaged to represent or counsel;

(vi) state the total amount of attorney fees approved by the Attorney General for payment to an outside counsel for legal services under a contingent fee contract during the fiscal year that ends the immediately preceding June 30; and

(vii) be accompanied by each written determination under R105-1-10(8) and Rule R105-1-5(1)(d) made during the fiscal year that ends the immediately preceding June 30.

R105-1-12. Contracts.

Those awarded a contract under this Rule shall be required to enter into a written contract with the Attorney General. The written contract shall contain all material terms set forth in:

(1) The final procurement documents issued by the Utah Attorney General;

(2) The provisions in documents submitted by the provider to the extent such provisions are accepted by the Attorney General;

(3) A termination for cause and a termination for convenience clause; and

(4) Any terms required by law, whether by the constitutions, statutes, or rules or regulations of the United States or the State of Utah.

(5) Nothing in this Rule regarding contingency fee contracts may be construed to expand the authority of a state department, division, or other agency to enter into a contract if that authority does not otherwise exist.

R105-1-13. Retention and Non-availability of Files.

(1) All proposals submitted to the Attorney General under this rule become the property of the State of Utah and the office of the Attorney General.

(2) All information in all proposals shall be placed in a file relating to the project for which the proposal was submitted. Each file shall contain:

(a) If applicable, a copy of all written determinations of the Attorney General required by the Utah Procurement Code or this Rule;

(b) A copy of the procurement documents and any written documentation related to notification requirements; and

(c) All responses to procurements and modifications, in writing, to any procurement if those modifications have been negotiated by the Attorney General.

(d) All records shall be maintained or disposed of in accordance with Part 20 of the Utah Procurement Code.

KEY: Attorney General, litigation support, outside counsel, expert witnesses

January 20, 2017 **Art VII Sec 16**
67-5
63G-6

R152. Commerce, Consumer Protection.
R152-6. Utah Administrative Procedures Act Rules.
R152-6-1. Designation of Adjudicative Proceedings.

A. All adjudicative proceedings within the Division are designated as informal proceedings.

B. Notwithstanding Subsection A, a party may move to convert proceedings to formal adjudicative proceedings in accordance with the provisions of Subsection 63G-4-202(3).

C. No hearing will be held unless specifically allowed or required under any laws administered by the Division, or by the Utah Administrative Procedures Act.

R152-6-2. Designation of Presiding Officer.

The presiding officer in any proceeding shall be the director of the division. The director may designate another person to act as presiding officer in any proceeding or portion thereof.

KEY: administrative procedures, government hearings, consumer protection
January 9, 2017 13-2-5(1)
Notice of Continuation December 1, 2016

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 methacrylete (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 methacrylete (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) endrocrinology;
(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	**58-11a-101**
Notice of Continuation January 19, 2017	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-31b. Nurse Practice Act Rule.
R156-31b-101. Title.

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

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in this rule:

(1) "Accreditation" means formal recognition and approval of a nurse education program by an accrediting body for nursing education that is approved by the United States Department of Education.

(2) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

(3) "APRN" means advanced practice registered nurse.

(4) "APRN-CRNA" means advanced practice registered nurse with registered nurse anesthetist certification.

(5) "Approved continuing education" means:

(a) continuing education that has been approved by a nationally or internationally recognized approver of professional continuing education for health-related industries;

(b) nursing education courses offered by an approved education program as defined in Subsection R156-31b-102(7);

(c) health-related coursework taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education;

(d) continuing education approved by any state board of nursing; or

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

(6) "Approved education program" means any nursing education program that meets the standards established in Section 58-31b-601 or Section R156-31b-602.

(7) "Approved re-entry program" means:

(a) a program designed to evaluate nursing competencies for nurses;

(b) approved by a state board of nursing; or

(c) offered by an accredited nursing education program; and

(d) includes a minimum of 150 hours of supervised clinical learning.

(8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(9) "Comprehensive nursing assessment" means:

(a) conducting extensive initial and ongoing data collection:

(i) for individuals, families, groups or communities; and

(ii) addressing anticipated changes in patient conditions as well as emergent changes in patient health status;

(b) recognizing alterations to previous patient conditions;

(c) synthesizing the biological, psychological, spiritual, and social aspects of the patient's condition;

(d) evaluating the impact of nursing care; and

(e) using data generated from the assessments conducted pursuant to this Subsection (a) through (d) to:

(i) make independent decisions regarding patient health care needs;

(ii) plan nursing interventions;

(iii) evaluate any possible need for different interventions; and

(iv) evaluate any possible need to communicate and consult with other health team members.

(10) "Contact hour" in the context of continuing education means 60 minutes, which may include a 10-minute break.

(11) "Delegate" means:

(a) to transfer to another nurse the authority to perform a selected nursing task in a selected situation;

(b) in the course of practice of an APRN who specializes in psychiatric mental health nursing, to transfer to any individual licensed as a mental health therapist selected psychiatric APRN supervisory clinical experiences within generally-accepted industry standards; or

(c) to transfer to an unlicensed person the authority to perform a task that, according to generally-accepted industry standards or law, does not require a nursing assessment as defined in Sections R156-31b-102(8) and (14).

(12) "Delegatee" means one or more persons assigned by a delegator to act on the delegator's behalf.

(13) "Delegator" means a person who assigns to another the authority to perform a task on behalf of the person.

(14)(a) "Disruptive behavior" means conduct, whether verbal or physical, that:

(i) is demeaning, outrageous, or malicious;

(ii) occurs during the process of delivering patient care; and

(iii) places a patient at risk.

(b) "Disruptive behavior" does not include criticism that is offered in good faith with the aim of improving patient care.

(15) "Focused nursing assessment" means an appraisal of a patient's status and situation at hand, including:

(a) verification and evaluation of orders; and

(b) assessment of:

(i) the patient's nursing care needs;

(ii) the complexity and frequency of the required nursing care;

(iii) the stability of the patient; and

(iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs.

(16) "Foreign nurse education program" means any program that originates or occurs outside of the United States.

(17) "Individualized healthcare plan" or "IHP" means a written document that outlines the provision of student healthcare services intended to achieve specific student outcomes.

(18) "Licensure by equivalency" applies only to the licensed practical nurse and may be warranted if the person seeking licensure:

(a)(i) has, within the two-year period preceding the date of application, successfully completed course work in a registered nurse education program that meets the criteria established in Sections 58-31b-601 and R156-31b-602; and

(ii) has been unsuccessful on the NCLEX-RN at least one time; or

(b)(i) is currently enrolled in an accredited registered nurse education program; and

(ii) has completed course work that is certified by the education program provider as being equivalent to the course work of an ACEN-accredited practical nursing program, as verified by the nursing education program director or administrator.

(19) "LPN" means licensed practical nurse.

(20) "MAC" means medication aide certified.

(21) "Medication" means any prescription or nonprescription drug as defined in Subsections 58-17b-102(24), (37) or (61) of the Pharmacy Practice Act.

(22) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(23) "Non-approved education program" means any nurse prelicensing course of study that does not meet the criteria of Section 58-31b-601, including a foreign nurse education program.

(24) "Nurse" means:

(a) an individual licensed under Title 58, Chapter 31b as:
(i) a licensed practical nurse;
(ii) a registered nurse;
(iii) an advanced practice registered nurse; or
(iv) an advanced practice registered nurse-certified registered nurse anesthetist; or
(b) a certified nurse midwife licensed under Title 58, Chapter 44a.
(25) "Other specified health care professionals," as used in Subsection 58-31b-102(15), means an individual, in addition to a registered nurse or a licensed physician, who is permitted to direct the tasks of a licensed practical nurse, and includes:
(a) an advanced practice registered nurse;
(b) a certified nurse midwife;
(c) a chiropractic physician;
(d) a dentist;
(e) an osteopathic physician;
(f) a physician assistant;
(g) a podiatric physician;
(h) an optometrist;
(i) a naturopathic physician; or
(j) a mental health therapist as defined in Subsection 58-60-102(5).
(26) "Patient" means one or more individuals:
(a) who receive medical and/or nursing care; and
(b) to whom a licensee owes a duty of care.
(27) "Patient surrogate" means an individual who has legal authority to act on behalf of a patient when the patient is unable to act or make decisions unaided, including:
(a) a parent;
(b) a foster parent;
(c) a legal guardian; or
(d) a person legally designated as the patient's attorney-in-fact.
(28) "PN" means an unlicensed practical nurse.
(29) "Psychiatric mental health nursing specialty" means an expertise in psychiatric mental health, whether as a clinical nurse specialist or nurse practitioner licensed as an APRN.
(30) "Practica" means working in the nursing field as a student; not exclusive to patient care activities.
(31) "Practitioner" means a person authorized by law to prescribe treatment, medication, or medical devices.
(32) "RN" means a registered nurse.
(33) "School" means any private or public institution of primary or secondary education, including a charter school, preschool, kindergarten, or special education program.
(34) "Supervision" is as defined in Subsection R156-1-102a(4).
(35) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b is further defined in Section R156-31b-502.

R156-31b-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 31b.

R156-31b-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.

R156-31b-201. Board of Nursing -- Membership.
In accordance with Subsection 58-31b-201(1), the Board membership shall comprise:
(1) one licensed practical nurse;
(2) two advanced practice registered nurses, at least one of whom is an APRN-CRNA;
(3) four RNs;
(4) two additional members licensed either as RNs or APRNs who are actively involved in nursing education; and
(5) two public members.

R156-31b-202. Advisory Peer Education Committee Created - Membership - Duties.
(1) In accordance with Subsection 58-1-203(1)(f), there is created the Advisory Peer Education Committee.
(2) The duties and responsibilities of the Advisory Peer Education Committee are to:
(a) review applications for approval of medication aide training programs;
(b) monitor a nursing education program that is approved for a limited time under Section R156-31b-602 as it progresses toward accreditation; and
(c) advise the Division as to nursing education issues.
(3) The composition of the Advisory Peer Education Committee shall be:
(a) seven RNs or APRNs actively involved in nursing education, including at least one representative from public, private, and proprietary nursing programs; and
(b) any member of the Board who wishes to serve on the committee.

R156-31b-301. License Classifications - Professional Upgrade.
(1) A licensed practical nurse license shall be superseded upon the issuance of a registered nurse license.
(2) An advanced practice registered nurse may hold both an APRN and an RN license in Utah.
(3) Unless the APRN requests that both the APRN and RN licenses remain active, the registered nurse license shall be superseded upon the issuance of an advanced practice registered nurse license.

R156-31b-301a. LPN License -- Education, Examination, and Experience Requirements.
(1) An applicant who has never obtained a license in any state or country shall:
(a) demonstrate that the applicant:
(i) has successfully completed a PN prelicensing education program that meets the requirements of Section 58-31b-601;
(ii) has successfully completed a PN prelicensing education program that is equivalent to an approved program under Section 58-31b-601;
(iii)(A) has completed an RN prelicensing education program that meets the requirements of Section 58-31b-601; and
(B) has taken, but not passed the NCLEX-RN at least one time; or
(v)(A) is enrolled in a registered nurse education program that meets the requirements of Section 58-31b-601; and
(B) has completed coursework that is equivalent to the coursework of an accredited practical nurse program;
(b) pass the NCLEX-PN examination pursuant to Section R156-31b-301e; and
(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.
(2) An applicant who holds a current LPN license issued by another country or state shall:
(a) demonstrate that the license issued by the other jurisdiction is active and in good standing as of the date of application;
(b) demonstrate that the PN prelicensing education completed by the applicant:
(i) is equivalent to PN prelicensing education approved in Utah as of the date of the applicant's graduation; and
(ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;
(c) pass the NCLEX-PN examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(3) An applicant who holds a current LPN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah and complete all requirements pursuant to R156-31b-301a(2).

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the NCLEX-PN examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

(i) successfully complete an approved re-entry program; and

(ii) pass the NCLEX-PN examination within 60 days following the date of application; or

(d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

(5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (2)(b); and

(b) comply with this Subsection (4) as applicable; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301b. RN License -- Education, Examination, and Experience Requirements.

(1) An applicant who has never obtained a license in any state or country shall:

(a) demonstrate that the applicant has successfully completed an RN prelicensing education program that:

(i) meets the requirements of Section 58-31b-601; or

(ii) is equivalent to an approved program under Section 58-31b-601;

(b) pass the NCLEX-RN examination pursuant to Section R156-31b-301e; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) An applicant who holds a current RN license issued by another country or state shall:

(a) demonstrate that the license issued by the other jurisdiction is current, active, and in good standing as of the date of application;

(b)(i) demonstrate that the applicant has graduated from an RN prelicensing education program; and

(ii) if a foreign education program, demonstrate that the program meets all requirements outlined in Section R156-31b-301d;

(c) pass the NCLEX-RN examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(3) An applicant who holds a current RN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah and complete all requirements pursuant to R156-31b-301b(2).

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the NCLEX-RN examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

(i) successfully complete an approved re-entry program; and

(ii) pass the NCLEX-RN examination within 60 days following the date of application; or

(d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

(5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (2)(b);

(b) comply with this Subsection (4) as applicable; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301c. APRN License -- Education, Examination, and Experience Requirements.

(1) An applicant who is not currently and validly licensed as an APRN in any state or country shall:

(a) demonstrate that the applicant holds a current, active RN license in good standing;

(b) demonstrate that the applicant has successfully completed an APRN prelicensing education program that meets the requirements of Subsection 58-31b-601(1) and Subsection 58-31b-302(4)(e);

(c) pass a national certification examination consistent with the applicant's educational specialty, pursuant to Section R156-31b-301e, and administered by one of the following credentialing bodies:

(i) the American Nurses Credentialing Center Certification;

(ii) the Pediatric Nursing Certification Board;

(iii) the American Association of Nurse Practitioners;

(iv) the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

(v) the American Midwifery Certification Board, Inc.; or

(vi) the National Board of Certification and Recertification for Nurse Anesthetists;

(d) if the applicant specializes in psychiatric mental health nursing, demonstrate that the requirements outlined in this Subsection (2) are met; and

(e) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) Requirements for APRN Specializing in Psychiatric Mental Health Nursing:

(a) In accordance with Subsection 58-31b-302(4)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall consist of a minimum of 4,000 hours of psychiatric mental health nursing education and clinical practice, including mental health therapy, as follows.

(i) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing.

(ii) The remaining 3,000 hours shall:

(A) be completed after passing the applicable national certification examination and within five years of graduation from an accredited master's or doctoral level educational program;

(B) include a minimum of 1,000 hours of mental health therapy practice; and

(C) include at least 2,000 clinical practice hours that are completed under the supervision of:

(I) an APRN specializing in psychiatric mental health

nursing; or

(II) a licensed mental health therapist as delegated by the supervising APRN.

(b) An applicant who obtains all or part of the clinical practice hours outside of Utah may receive credit for that experience by demonstrating that the training completed is equivalent in all respects to the training required under this Subsection (2)(a).

(c)(i) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(ii) Duties and responsibilities of a supervisor include:

(A) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(B) supervising not more than three supervisees unless otherwise approved by the Division in collaboration with the Board; and

(C) submitting appropriate documentation to the Division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(3) An applicant who holds a current APRN license issued by another state or country shall:

(a) demonstrate that the license issued by the other state or country is current, active, and in good standing as of the date of application;

(b) demonstrate that the APRN prelicensing education completed by the applicant:

(i) if completed on or after January 1, 1987:

(A) is equivalent to APRN prelicensing education approved in Utah as of the date of the applicant's graduation; or

(B) constitutes a bachelor degree in nursing; and

(ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;

(c) if the applicant specializes in psychiatric mental health nursing, demonstrate that the applicant has successfully engaged in active practice in psychiatric mental health nursing for not less than 4,000 hours in the three-year period immediately preceding the date of application; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(4) An applicant who has been licensed previously in Utah, but whose license has expired, lapsed, or been on inactive status, shall:

(a) demonstrate current certification in the individual's specialty area; and

(b) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(5) An applicant who has been licensed previously in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (3)(b);

(b) demonstrate that the applicant is currently certified in the individual's specialty area; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301d. Foreign Education Programs.

An applicant whose prelicensing education was completed through a foreign program that does not meet the requirements of Section 58-31b-601, shall demonstrate:

(1)(a) that all three components of the CGFNS certification process and the credentials evaluation service professional report have been completed so as to demonstrate that the courses completed are substantially equivalent to coursework of approved education programs as of the date of the applicant's graduation;

(b) that at least one of the following practice requirements has been met within the five-year period preceding the date of application:

(i) the applicant has practiced as a licensed nurse for a minimum of 960 hours in a state or territory of the United States;

(ii) the applicant has completed a Board-approved refresher course;

(iii) the applicant has obtained an advanced (master's or doctorate) nursing degree; or

(iv) the applicant has qualified for and obtained a license upgrade (LPN to RN or RN to APRN); and

(c) that the applicant has achieved a passing score on an approved English proficiency test prior to the date of application; or

(2)(a) that the applicant practiced as a licensed nurse for 6,000 hours in another state or territory of the United States during the five-year period immediately preceding the date of application; and

(b) that the applicant has achieved a passing score on an approved English proficiency test prior to the date of application.

R156-31b-301e. Examination Requirements.

(1)(a) An applicant for licensure as an LPN, RN, or APRN shall pass the applicable licensure or certification examination within five years of the applicant's date of graduation from the nurse education program, except as provided in Subsection (1)(b).

(b) An individual specializing in psychiatric mental health nursing shall complete the applicable certification examination prior to beginning the 3,000 hours of required psychiatric clinical and mental health therapy practice.

(c) An individual who does not pass the applicable licensure or certification examination pursuant to this Subsection (1)(a) or (b) as applicable shall complete another approved nursing education program before again attempting to pass the licensure or certification examination.

(2) An applicant for certification as an MAC shall pass the NCSBN Medication Aide Certification Examination (MACE) within one year of completing the approved training program.

(3) The examinations required under these rules are national examinations and cannot be challenged before the Division.

R156-31b-301f. Licensing Fees.

An applicant for licensure shall pay the applicable nonrefundable application fee before the application may be considered by the Division or Board.

R156-31b-301g. Criminal Background Checks.

A criminal background check conducted during the application process is considered current and acceptable for that specific application only.

R156-31b-303. LPN, RN, and APRN License Renewal - Professional Downgrade - Continuing Education.

(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 31b, is established by rule in Section R156-1-308a.

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

(3) Each applicant for renewal shall comply with the following continuing competency requirements:

(a) An LPN or RN shall complete one of the following during the two-year period immediately preceding the date of application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and

completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall comply with the following:

(i)(A) be currently certified or recertified in the licensee's specialty area of practice; or

(B) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice; and

(ii) if authorized to prescribe controlled substances, comply with Section R156-37-402 and Section 58-37-6.5.

(c) An MAC shall complete eight contact hours of approved continuing education related to medications or medication administration during the two-year period immediately preceding the application for renewal.

(4) A licensee who wishes to downgrade the license in conjunction with a renewal or reinstatement application shall:

(a) comply with the competency requirements of this Subsection (3)(a);

(b) pay all required fees, including any applicable late fees;

(c) submit a completed renewal or reinstatement form as applicable to the license desired; and

(d) complete and sign a license surrender document as provided by the Division.

(5) A licensee who obtained a license downgrade may apply for license upgrade by:

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

(ii) meeting the continuing competency requirements of this Subsection (3); and

(iii) paying the established license fee for a new applicant for licensure.

R156-31b-309. APRN Intern License.

(1) An individual who has completed all requirements outlined in Subsection R156-31b-301c(1) except the certification examination requirement may apply for an APRN intern license.

(2) In accordance with Section 58-31b-306, and unless this Subsection (3) or (4) applies, an intern license expires the earlier of:

(a) 180 days from the date of issuance;

(b) 30 days after the Division receives notice pursuant to this Subsection (4) that the applicant has failed the specialty certification examination; or

(c) upon issuance of an APRN license.

(3) The Division in collaboration with the Board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

(4) An individual holding an APRN intern license specializing in psychiatric mental health nursing must work under the supervision of an APRN pursuant to R156-31b-301c.

(5) It is the professional responsibility of an APRN intern:

(a) to inform the Division of examination results within ten calendar days of receipt; and

(b) to cause the examination agency to send the examination results directly to the Division.

R156-31b-402. Administrative Penalties.

In accordance with Sections 58-1-501, 58-31b-501, 58-31b-502, 58-31b-801 and R156-31b-502 and Subsection 58-31b-102(1), and unless otherwise ordered by the presiding officer, the following fine schedule shall apply to a nurse or MAC.

(1) Initial and second offenses.

(a) Using a protected title, name, or initials, if the user is not properly licensed under this chapter, in violation of Subsection 58-31b-501(1):

initial offense: $500 - $4,000

second offense: $4,000 - $8,000

(b) Using any name, title, or initials that would cause a reasonable person to believe the user is licensed or certified under this chapter if the user is not properly licensed or certified under this chapter, in violation of Subsection 58-31b-501(2):

initial offense: $500 - $4,000

second offense: $4,000 - $8,000

(c) Conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been approved under Section 58-31b-601 or Subsection R156-31b-602, in violation of Subsection 58-31b-501(3):

initial offense: $2,000 - $7,500

second offense: $7,500 - $9,500

(d) Practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in the practice of nursing, if the person is not licensed to do so or exempted from licensure under Utah Code 58-31b et seq. or restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license, or in violation of restrictions that have been placed on a license, in violation of Subsection 58-1-501(1)(a):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(e) Impersonating another licensee, or practicing an occupation or profession under a false or assumed name, in violation of Subsection 58-1-501(1)(b):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(f) Knowingly employing a person to practice or engage in or attempt to practice or engage in the practice of nursing if the employee is not licensed to do so, in violation of Subsection 58-1-501(1)(c):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(g) Knowingly permitting the person's authority to engage in the practice of nursing to be used by another person, in violation of Subsection 58-1-501(1)(d):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(h) Obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(i) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state without prescriptive authority conferred by a license, or by an exception to licensure; or with prescriptive authority conferred by an exception or a multistate practice privilege, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(1)(f)(i):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(j) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating the practice of nursing, in violation of Subsection 58-1-501(2)(a):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(k) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard

applicable to the practice of nursing, in violation of Subsection 58-1-501(2)(b):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(l) Engaging in conduct that results in conviction or a plea of nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the practice of nursing, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the profession, in violation of Subsection 58-1-501(2)(c):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(m) Engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the profession of nursing if the conduct would, in the state of Utah, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401, in violation of Subsection 58-1-501(2)(d):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(n) Engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in practice of the nursing profession, in violation of Subsection 58-1-501(2)(e):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(o) Practicing or attempting to practice the profession of nursing despite being physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(p) Practicing or attempting to practice the profession of nursing through gross incompetence, gross negligence, or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(q) Practicing or attempting to practice the profession of nursing by any form of action or communication which is false, misleading, deceptive, or fraudulent, in violation of Subsection 58-1-501(2)(h):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(r) Practicing or attempting to practice the profession of nursing beyond the individual's scope of competency, abilities, or education, in violation of Subsection 58-1-501(2)(i):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(s) Practicing or attempting to practice the profession of nursing beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(t) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice in the profession of nursing or otherwise facilitated by the licensee's license, in violation of Subsection 58-1-501(2)(k):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(u) Acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or under these rules, in violation of Subsection 58-1-502(2)(l):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(v) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or with prescriptive authority conferred by an exception issued under this title, or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(2)(m):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(w) Failing to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's or person with a certification's position, in violation of Subsection 58-31b-502(1):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(x) Failing to provide nursing service in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, gender, or nature of the patient's health problem, in violation of Subsection 58-31b-502(2):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(y) Engaging in sexual relations with a patient, in violation of Subsection 58-31b-502(3):
initial offense: $4,000 - $8,000
second offense: $8,000 - $10,000
(z) Exploiting or using information about a patient or exploiting the professional relationship by use of knowledge of the patient obtained while practicing the occupation or profession, in violation of Subsection 58-31b-502(4):
initial offense: $2,000 - $5,000
second offense: $5,000 - $10,000
(aa) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug, in violation of Subsection 58-31b-502(5):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(bb) Unauthorized taking or personal use of nursing supplies from an employer, in violation of Subsection 58-31b-502(6):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(cc) Unauthorized taking or personal use of a patient's personal property, in violation of Subsection 58-31b-502(7):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(dd) Knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any circumstance related to the patient and the medical or nursing care provided, in violation of Subsection 58-31b-502(8):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(ee) Unlawful or inappropriate delegation of nursing care, in violation of Subsection 58-31b-502(9):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(ff) Failing to exercise appropriate supervision of persons

providing patient care services under supervision of the licensed nurse, in violation of Subsection 58-31b-502(10):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(gg) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice as a nurse or MAC, in violation of Subsection 58-31b-502(11):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(hh) Failing to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report, in violation of Subsection 58-31b-502(12):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(ii) Breaching a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, in violation of Subsection 58-31b-502(13):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(jj) Failing to pay a penalty imposed by the Division, in violation of Subsection 58-31b-502(14): double the original penalty amount up to $20,000
(kk) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan, in violation of Subsection 58-31b-502(15):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(ll) Failing to confine practice within the limits of competency, in violation of Section 58-31b-801:
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(mm) Engaging in any other conduct which constitutes unprofessional or unlawful conduct, in violation of Subsection 58-1-501(1) or (2):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(nn) Engaging in a sexual relationship with a patient surrogate concurrent with the professional relationship, in violation of Subsection R156-31b-502(1)(e):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(oo) Failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license, in violation of Subsection R156-31b-502(1)(a):
initial offense: $500 - $4,000
second offense: $4,000 - $8,000
(pp) Knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information, in violation of Subsection R156-31b-502(1)(b):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(qq) Engaging in practice in a disruptive manner, in violation of Subsection R156-31b-502(1)(f):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(rr) Violating the term of an order governing a license, in violation of Subsection 58-1-501(2)(o):
initial offense: $250 - $4,000
second offense: $4,000 - $8,000
(2) Subsequent offenses. Sanctions for an offense subsequent to the second offense, shall be $10,000 or $2,000 per day.

R156-31b-502. Unprofessional Conduct.
(1) "Unprofessional conduct" includes:
(a) failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license;
(b) knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information;
(c) as to an RN or LPN, issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17b-620, or as may be otherwise legally permissible;
(d) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:
(i) that standards of nursing practice are established and carried out;
(ii) that safe and effective nursing care is provided to patients;
(iii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients; or
(iv) that the nurses employed by the agency have the knowledge, skills, ability and current competence to carry out the requirements of their jobs;
(e) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:
(i) did not result in any form of abuse or exploitation of the surrogate or patient; and
(ii) did not adversely alter or affect in any way:
(A) the nurse's professional judgment in treating the patient;
(B) the nature of the nurse's relationship with the surrogate; or
(C) the nature of the nurse's relationship with the patient;
(f) engaging in disruptive behavior in the practice of nursing;
(g) prescribing to oneself any controlled substance drug, in violation of Subsection R156-37-501(1)(a); and
(h) violating any federal or state law relating to controlled substances, including self-administering any controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug, in violation of Section R156-37-502.
(2) In accordance with a prescribing practitioner's order and an IHP, a registered nurse who, in reliance on a school's policies or the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a, delegates or trains an unlicensed assistive person to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a, shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

R156-31b-602. Requirements for Limited-time Approval of Non-accredited Nursing Education Programs.
(1)(a) Pursuant to Subsection 58-31b-601(2), a nursing education program may, prior to obtaining an accreditation described in Subsection 58-31b-601(1), qualify for a limited time as an approved education program if the program was granted limited-time approval on or before May 15, 2016 and had demonstrated to the satisfaction of the Board that the program:
(i) established a timeline which allows for the initial accreditation visit to occur before the first students graduate;
(ii) understands the accreditation standards of its selected accrediting body as demonstrated in a written report which includes plans and processes consistent with the accrediting body for:
(A) curricular organization and delivery method;
(B) student learning outcomes;
(C) student support;
(D) program administration and organization;
(E) learning environment and facilities;
(F) clinical learning and placements; and

(G) faculty and nurse administrator qualifications;

(iii) clearly informs students and potential students about its accreditation status and the potential implications for future practice; and

(2) The provider of a program with limited-time approval pursuant to this Subsection (1) and (2) shall, pursuant to this Subsection (3), disclose to each student who enrolls:

(a) that program accreditation is pending;

(b) that any education completed prior to the accrediting body's final determination will satisfy, at least in part, state requirements for prelicensing education; and

(c) that, if the program fails to achieve accreditation on or before December 31, 2020, any student who has not yet graduated will not be made eligible for the NCLEX by the state of Utah.

(3) The disclosure required by this Subsection (2) shall:

(a) be signed by each student who enrolls with the provider; and

(b) at a minimum, state the following: "The nursing program in which you are enrolling has not yet been accredited. The program is being reviewed by the (accrediting body). Any education you complete prior to December 31, 2020 or a final determination by the (accrediting body) will satisfy associated state requirements for licensure. If the (accrediting body) ultimately determines that the program does not qualify for accreditation, you will not be made eligible for the NCLEX by the state of Utah."

(4) If an accredited program receives notice or determines that its accreditation status is in jeopardy, the institution offering the program shall:

(a) immediately notify the Board of its accreditation status;

(b) immediately and verifiably notify all enrolled students in writing of the program's accreditation status, including:

(i) the estimated date on which the accrediting body will make its final determination as to the program's accreditation; and

(ii) the potential impact of a program's accreditation status on the graduate's ability to secure licensure and employment or transfer academic credits to another institution in the future; and

(c) attempt negotiations with other academic institutions to establish a transfer articulation agreement.

(5) If a program with limited-time approval fails to achieve accreditation by December 31, 2020 or if a program loses its accreditation, the institution offering the program shall:

(a) submit a written report to the Board within ten days of receiving formal notification from the accrediting body;

(b) notify all matriculated and pre-enrollment nursing students about the program's accreditation status;

(c) inform all nursing students who will graduate from a non-accredited program that they will not be eligible for initial licensure through Utah; and

(d) submit a written plan to close the program and cease operations, if necessary.

R156-31b-603. Education Providers -- Requirements for Ongoing Communication with the Board.

An education program that has achieved limited-time approval of its program(s) shall provide to the Board:

(1) a Board-approved annual report by December 31 of each calendar year; and

(2) copies of any correspondence between the program provider and the accrediting body within 30 days of receipt or submission of the correspondence.

R156-31b-609. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.

A nursing education program provider located in another state that desires to place nursing students in Utah agencies or institutions for clinical or practica experiences shall, prior to placing a student, demonstrate to the satisfaction of the Division and Board that the program:

(1) is approved by the home state Board of Nursing;

(2) is accredited by an accrediting body for nursing education that is approved by the United States Department of Education;

(3) has faculty who:

(a) are employed by the nursing education program;

(b) meet the requirements to be a faculty member as established by the accrediting body and the home state's Board of Nursing;

(c) are licensed in good standing in Utah or a Compact state if supervising face-to-face clinical or practica experiences; and

(d) are affiliated with an institution of higher education; and

(4) has a plan for selection and supervision of:

(a) faculty or preceptor; and

(b) the clinical activity, including:

(i) the selection of an appropriate clinical location, and

(ii) ensuring that each preceptor is licensed in good standing in Utah or a Compact state;

(5) maintains its accreditation with an accrediting body for nursing education that is approved by the United States Department of Education; and

(a) reports any changes in its accreditation status to the Utah Board of Nursing in a timely manner;

(6) submits an annual report to the Utah Board of Nursing by August 1 of each year; and

(a) includes in the annual report:

(i) an overview of the number of students placed in Utah facilities;

(ii) an attestation that all face-to-face clinical faculty and preceptors used by the program are licensed in good standing in Utah or a Compact state; and

(iii) a verification that it is currently accredited, in good standing, with its accrediting body.

R156-31b-701. Delegation of Nursing Tasks in a Non-school Setting.

In accordance with Subsection 58-31b-102(14)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1)(a) The delegator retains accountability for the appropriate delegation of tasks and for the nursing care of the patient.

(b) The delegator may not delegate to unlicensed assistive personnel, including a physician's medical assistant, any task requiring the specialized knowledge, judgment, or skill of a licensed nurse.

(c) Before determining which, if any, nursing tasks may be delegated, the delegator shall make a focused nursing assessment of the circumstances.

(d) A delegator may not delegate a task that is:

(i) outside the area of the delegator's responsibility;

(ii) outside the delegator's personal knowledge, skills, or ability; or

(iii) beyond the ability or competence of the delegatee to perform:

(A) as personally known by the delegator; and

(B) as evaluated according to generally accepted nursing practice standards of health, safety, and reasonable prudence.

(e) In delegating a nursing task, the delegator shall:

(i) provide instruction and direction necessary to allow the delegatee to safely perform the specific task;

(ii) provide ongoing appropriate supervision and evaluation of the delegatee who is performing the task;

(iii) explain the delegation to ensure that the delegatee understands which patient is to be treated, and according to

what time frame;

(iv) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task;

(v) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee; and

(vi)(A) evaluate the following factors to determine the degree of supervision required to ensure safe care:

(I) the stability and condition of the patient;

(II) the training, capability, and willingness of the delegatee to perform the delegated task;

(III) the nature of the task being delegated, including the complexity, irreversibility, predictability of outcome, and potential for harm inherent in the task;

(IV) the proximity and availability to the delegatee of the delegator or other qualified nurse during the time(s) when the task will be performed; and

(V) any immediate risk to the patient if the task is not carried out; and

(B) ensure that the delegator or another qualified nurse is readily available either in person or by telecommunication to:

(I) evaluate the patient's health status;

(II) evaluate the performance of the delegated task;

(III) determine whether goals are being met; and

(IV) determine the appropriateness of continuing delegation of the task.

(2) Nursing tasks that may be delegated shall meet the following criteria as applied to each specific patient situation:

(a) be considered routine care for the specific patient;

(b) pose little potential hazard for the patient;

(c) be generally expected to produce a predictable outcome for the patient;

(d) be administered according to a previously developed plan of care; and

(e) be limited to those tasks that do not inherently involve nursing judgment that cannot be separated from the procedure.

(3) If the nurse, upon review of the patient's condition, the complexity of the task, the ability of the proposed delegatee, and other criteria established in this Subsection, determines that the proposed delegatee cannot safely provide the requisite care, the nurse shall not delegate the task to such proposed delegatee.

(4) A delegatee may not:

(a) further delegate to another person any task delegated to the individual by the delegator; or

(b) expand the scope of the delegated task without the express permission of the delegator.

(5) Tasks that, according to the internal policies or practices of a medical facility, are required or allowed to be performed by an unlicensed person shall not be deemed to have been delegated by a licensee.

R156-31b-701a. Delegation of Tasks in a School Setting.

In addition to the delegation rule found in Section R156-31b-701, the delegation of tasks in a school setting is further defined, clarified, or established as follows:

(1) Before a registered nurse may delegate a task that is required to be performed within a school setting, the registered nurse shall:

(a) develop, in conjunction with the applicable student, parent(s) or parent surrogate(s), educator(s), and healthcare provider(s) an IHP; and

(b) ensure that the IHP is available to school personnel.

(2) Any task being delegated by a registered nurse shall be identified within the patient's current IHP.

(3)(a) A registered nurse shall personally train any unlicensed person who will be delegated the task of administering medications that are routine for the student.

(b) The training required under this Subsection (3)(a) shall be performed at least annually.

(c) A registered nurse may not delegate to an unlicensed person the administration of any medication:

(i) with known, frequent side effects that can be life threatening;

(ii) that requires the student's vital signs or oxygen saturation to be monitored before, during or after administration of the drug;

(iii) that is being administered as a first dose:

(A) of a new medication; or

(B) after a dosage change; or

(iv) that requires nursing assessment or judgment prior to or immediately after administration.

(d) In addition to delegating other tasks pursuant to this rule, a registered nurse may delegate to an unlicensed person who has been properly trained regarding a diabetic student's IHP:

(i) the administration of a scheduled dose of insulin; and

(ii) the administration of glucagon in an emergency situation, as prescribed by the practitioner's order or specified in the IHP.

R156-31b-703a. Standards of Professional Accountability.

The following standards apply equally to the LPN, RN, and APRN licenses. In demonstrating professional accountability, a licensee shall:

(1) practice within the legal boundaries that apply to nursing;

(2) comply with all applicable statutes and rules;

(3) demonstrate honesty and integrity in nursing practice;

(4) base nursing decisions on nursing knowledge and skills, and the needs of patients;

(5) seek clarification of orders when needed;

(6) obtain orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(7) demonstrate attentiveness in delivering nursing care;

(8) implement patient care, including medication administration, properly and in a timely manner;

(9) document all care provided;

(10) communicate to other health team members relevant and timely patient information, including:

(a) patient status and progress;

(b) patient response or lack of response to therapies;

(c) significant changes in patient condition; and

(d) patient needs;

(11) take preventive measures to protect patient, others, and self;

(12) respect patients' rights, concerns, decisions, and dignity;

(13) promote a safe patient environment;

(14) maintain appropriate professional boundaries;

(15) contribute to the implementation of an integrated health care plan;

(16) respect patient property and the property of others;

(17) protect confidential information unless obligated by law to disclose the information;

(18) accept responsibility for individual nursing actions, competence, decisions, and behavior in the course of nursing practice; and

(19) maintain continued competence through ongoing learning and application of knowledge in each patient's interest.

R156-31b-703b. Scope of Nursing Practice Implementation.

(1) LPN. An LPN shall be expected to:

(a) conduct a focused nursing assessment;

(b) plan for and implement nursing care within limits of competency;

(c) conduct patient surveillance and monitoring;

(d) assist in identifying patient needs;

(e) assist in evaluating nursing care;

(f) participate in nursing management by:
(i) assigning appropriate nursing activities to other LPNs;
(ii) delegating care for stable patients to unlicensed assistive personnel in accordance with these rules and applicable statutes;
(iii) observing nursing measures and providing feedback to nursing managers; and
(iv) observing and communicating outcomes of delegated and assigned tasks; and
(g) serve as faculty in area(s) of competence.
(2) RN. An RN shall be expected to:
(a) interpret patient data, whether obtained through a focused nursing assessment or otherwise, to:
(i) complete a comprehensive nursing assessment; and
(ii) determine whether, and according to what timeframe, another medical professional, a patient's family member, or any other person should be apprised of a patient's nursing needs;
(b) detect faulty or missing patient information;
(c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual, and social aspects of the patient's condition;
(d) utilize broad and complete analyses to plan strategies of nursing care and nursing interventions that are integrated within each patient's overall health care plan or IHP;
(e) demonstrate appropriate decision making, critical thinking, and clinical judgment to make independent nursing decisions and to identify health care needs;
(f) correctly identify changes in each patient's health status;
(g) comprehend clinical implications of patient signs, symptoms, and changes as part of ongoing or emergent situations;
(h) critically evaluate the impact of nursing care, the patient's response to therapy, and the need for alternative interventions;
(i) intervene on behalf of a patient when problems are identified so as to revise a care plan as needed;
(j) appropriately advocate for patients by:
(i) respecting patients' rights, concerns, decisions, and dignity;
(ii) identifying patient needs;
(iii) attending to patient concerns or requests; and
(iv) promoting a safe and therapeutic environment by:
(A) providing appropriate monitoring and surveillance of the care environment;
(B) identifying unsafe care situations; and
(C) correcting problems or referring problems to appropriate management level when needed;
(k) communicate with other health team members regarding patient choices, concerns, and special needs, including:
(i) patient status and progress;
(ii) patient response or lack of response to therapies; and
(iii) significant changes in patient condition;
(l) demonstrate the ability to responsibly organize, manage, and supervise the practice of nursing by:
(i) delegating tasks in accordance with these rules and applicable statutes; and
(ii) matching patient needs with personnel qualifications, available resources, and appropriate supervision;
(m) teach and counsel patient families regarding an applicable health care regimen, including general information about health and medical conditions, specific procedures, wellness, and prevention;
(n) if acting as a chief administrative nurse:
(i) ensure that organizational policies, procedures, and standards of nursing practice are developed, kept current, and implemented to promote safe and effective nursing care;
(ii)(A) assess the knowledge, skills, and abilities of nursing staff and assistive personnel; and
(B) ensure all personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level; and
(iii) ensure that thorough and accurate documentation of personnel records, staff development, quality assurance, and other aspects of the nursing organization are maintained;
(o) if employed by a department of health:
(i) implement standing orders and protocols; and
(ii) complete and provide to a patient prescriptions that have been prepared and signed by a physician in accordance with the provisions of Section 58-17b-620;
(p) serve as faculty in area(s) of competence; and
(q) perform any task within the scope of practice of an LPN.
(3) APRN.
(a) An APRN who chooses to change or expand from a primary focus of practice shall, at the request of the Division, document competency within that expanded practice based on education, experience, and certification. The burden to demonstrate competency rests upon the licensee.
(b) An individual licensed as an APRN may practice within the scope of practice of an RN and an LPN.
(c) An APRN who wishes to practice as an RN in a Compact state must qualify for and obtain an RN Compact license in Utah.

R156-31b-801. Medication Aide Certified -- Formulary and Protocols.

In accordance with Subsection 58-31b-102(12)(b)(i), the formulary and protocols for an MAC to administer routine medications are as follows.
(1) Under the supervision of a licensed nurse, an MAC may:
(a) administer over-the-counter medication;
(b) administer prescription medications:
(i) if expressly instructed to do so by the supervising nurse; and
(ii) via approved routes as listed in Subsection 58-31b-102(17)(b);
(c) turn oxygen on and off at a predetermined, established flow rate;
(d) destroy medications per facility policy;
(e) assist a patient with self administration; and
(f) account for controlled substances with another MAC or nurse physically present.
(2) An MAC may not administer medication via the following routes:
(a) central lines;
(b) colostomy;
(c) intramuscular;
(d) subcutaneous;
(e) intrathecal;
(f) intravenous;
(g) nasogastric;
(h) nonmetered inhaler;
(i) intradermal;
(j) urethral;
(k) epidural;
(l) endotracheal; or
(m) gastronomy or jejunostomy tubes.
(3) An MAC may not administer the following kinds of medications:
(a) barium and other diagnostic contrast;
(b) chemotherapeutic agents except oral maintenance chemotherapy;
(c) medication pumps including client controlled analgesia; and
(d) nitroglycerin paste.

(4) An MAC may not:

(a) administer any medication that requires nursing assessment or judgment prior to administration, through ongoing evaluation, or during follow-up;

(b) receive written or verbal patient orders from a licensed practitioner;

(c) transcribe orders from the medical record;

(d) conduct patient or resident assessments or evaluations;

(e) engage in patient or resident teaching activities regarding medications unless expressly instructed to do so by the supervising nurse;

(f) calculate drug doses, or administer any medication that requires a medication calculation to determine the appropriate dose;

(g) administer the first dose of a new medication or a dosage change, unless expressly instructed to do so by the supervising nurse; or

(h) account for controlled substances, unless assisted by another MAC or a nurse who is physically present.

(5) In accordance with Section R156-31b-701, a nurse may refuse to delegate to an MAC the administration of medications to a specific patient or in a specific situation.

(6)(a) A nurse practicing in a facility that is required to provide nursing services 24 hours per day shall not supervise more than two MACs per shift.

(b) A nurse providing nursing services in a facility that is not required to provide nursing services 24 hours per day may supervise as many as four MACs per shift.

R156-31b-802. Medication Aide Certified -- Approval of Training Programs.

In accordance with Subsection 58-31b-601(3), the minimum standards for an MAC training program to be approved by the Division in collaboration with the Board and the process to obtain approval are established as follows.

(1) All training programs shall be approved by the Division in collaboration with the Board and shall obtain approval prior to the program being implemented.

(2) Training programs may be offered by an educational institution, a health care facility, or a health care association.

(3) The program shall consist of at least:

(a) 60 clock hours of didactic (classroom) training that is consistent with the model curriculum set forth in Section R156-31b-803; and

(b) 40 hours of practical training within a long-term care facility.

(4) The classroom instructor shall:

(a)(i) have a current, active, LPN, RN, or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(ii) have at least one year of clinical experience; or

(b)(i) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(ii) have at least one year of clinical experience.

(5)(a) The on-site practical training experience instructor shall meet the following criteria:

(i)(A) have a current, active, LPN, RN or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(B) have at least one year of clinical experience; or

(ii)(A) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(B) have at least one year of clinical experience.

(b) The practical training instructor-to-student ratio shall be no greater than:

(i) 1:2 if the instructor is working with individual students to administer medications; or

(ii) 1:6 if the instructor is supervising students who are working one-on-one with medication nurses to administer medications in clinical facilities.

(c) The on-site practical training experience instructor shall be on site and available at all times if the student is not being directly supervised by a licensed nurse during the practical training experience.

(6) An entity seeking approval to provide an MAC training program shall:

(a) submit to the Division a complete application form prescribed by the Division;

(b) provide evidence of adequate and appropriate trainers and resources to provide the training program, including a well-stocked clinical skills lab or the equivalent;

(c) submit to the Division a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum referenced in Section R156-31b-803;

(d) document minimal admission requirements, which shall include:

(i) an earned high school diploma, successful passage of the general educational development (GED) test, or equivalent education as approved by the Board;

(ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry;

(iii) at least 2,000 hours of experience completed:

(A) as a certified nurse aide working in a long-term care setting; and

(B) within the two-year period preceding the date of application to the training program: and

(iv) current cardiopulmonary resuscitation (CPR) certification.

R156-31b-803. Medication Aide Certified -- Model Curriculum.

A school that offers a medication aide certification program shall follow the "Medication Assistant-Certified (MA-C) Model Curriculum" adopted by the National Council of State Boards of Nursing's Delegate Assembly on August 9, 2007, which is hereby adopted and incorporated by reference.

KEY: licensing, nurses

January 18, 2017	**58-31b-101**
Notice of Continuation March 18, 2013	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-55d. Burglar Alarm Licensing Rule.
R156-55d-101. Title.

This rule is known as the "Burglar Alarm Licensing Rule".

R156-55d-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55, or this rule:

(1) "Alarm company agent", as defined in Subsection 58-55-102(2), is further defined for clarification to include a direct seller in accordance with 26 U.S.C. Section 3508.

(2) "Conviction", as used in this rule, means criminal conduct where the filing of a criminal charge has resulted in:

(a) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(b) a pending diversion agreement;

(c) a plea of nolo contendere;

(d) a guilty plea;

(e) a finding of guilt based on evidence presented to a judge or jury; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(3) "Employee", as used in Subsection 58-55-102(17), means an individual:

(a) whose manner and means of work performance are subject to the right of control of, or are controlled by, an alarm company;

(b) whose compensation for federal income tax purposes is reported, or is required to be reported on a W-2 form issued by the company;

(c) who is entitled to workers compensation and unemployment insurance provided by the individual's employer per state or federal law; and

(d) who performs services in Utah as an alarm company agent while employed by a licensed alarm company.

(4) "Immediate supervision", as used in this rule, means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervision person, so as to ensure that the end result complies with applicable standards.

(5) "Sensitive alarm system information, as defined in Subsection 58-55-102(39), is further defined for clarification to include any information that would permit a person to compromise, bypass, deactivate, or disable any part of an alarm system. Sensitive alarm system information does not include knowledge of what is installed in the home nor the location, by general description, of the equipment installed unless the knowledge would permit a person to compromise, bypass, deactivate, or disable any part of an alarm system.

(6) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1), in Section R156-55d-502.

R156-55d-103. Authority -- Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55.

R156-55d-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.

R156-55d-302a. Qualifications for Licensure -- Application Requirements.

(1) An application for licensure as an alarm company shall include:

(a) two fingerprint cards containing:

(i) the fingerprints of the applicant's qualifying agent;

(ii) the fingerprints of each of the applicant's officers, directors, shareholders owning more than 5% of the stock of the company, partners, and proprietors; and

(iii) the fingerprints of each of the applicant's management personnel who will have responsibility for any of the company's operations as an alarm company within the state;

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each individual for whom fingerprints are required under Subsection (1)(b); and

(c) current photo identification for each individual for whom fingerprints are required under Subsection (1)(b). Acceptable photo identification shall include:

(i) a driver license issued by a state of the United States of American or Washington, District of Columbia; or

(ii) an identification card issued by the state of Utah.

(2) An application for license as an alarm company agent shall include:

(a) two fingerprint cards containing the fingerprints of the applicant;

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, regarding the applicant; and

(c) current photo identification for the applicant. Acceptable identification shall include:

(i) a driver license issued by a state of the United States of America or Washington, District of Columbia; or

(ii) an identification card issued by the state of Utah.

R156-55d-302c. Qualifications for Licensure -- Experience Requirements -- Qualifying Agent.

In accordance with Subsections 58-1-203(1) and 58-1-301(3) the experience requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(k)(i) are established as follows:

(1) An applicant shall have within the past ten years:

(a) not less than 6,000 hours of experience in a lawfully operated alarm company business of which not less than 2,000 hours shall have been in a managerial, supervisory, or administrative position; or

(b) not less than 6,000 hours of experience in a lawfully operated alarm company business combined with not less than 2,000 hours of managerial, supervisory, or administrative experience in a lawfully operated construction company.

(2) All experience under Subsection (1) shall be as an employee or in accordance with 26 U.S.C. Section 3508 as a direct seller, and under the immediate supervision of the applicant's employer;

(3) All experience must be obtained while lawfully engaged as an alarm company agent and working for a lawfully operated burglar alarm company.

(4) A total of 2,000 hours of work experience constitutes one year (12 months) of work experience.

(5) An applicant may claim no more than 2,000 hours of work experience in any 12 month period.

(6) No credit shall be given for experience obtained illegally.

R156-55d-302d. Qualifications for Licensure -- Examination Requirements -- Qualifying Agent.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the examination requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(k)(i)(C) are defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall:

(1) pass the Utah Burglar Alarm Law and Rule

Examination with a score of not less than 75%;

(2) pass the Burglar Alarm Qualifier Examination with a score of not less than 75%; and

(3) an applicant for licensure who fails an examination shall wait 30 days before retaking a failed examination.

R156-55d-302e. Qualifications for Licensure -- Insurance Requirements -- Alarm Company.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the insurance requirements for licensure as an alarm company in Section 58-55-302(3)(k)(x)(A)are defined, clarified, or established as follows:

(1) an applicant for an alarm company license shall file with the Division a "certificate of insurance" issued by an insurance company or agent licensed in the state demonstrating the applicant is covered by comprehensive public liability coverage in an amount of not less than $300,000 for each incident, and not less than $1,000,000 in total;

(2) the terms and conditions of the policy of insurance coverage shall provide that the Division shall be notified if the insurance coverage terminates for any reason; and

(3) all licensed alarm companies shall have available on file and shall present to the Division upon demand, evidence of insurance coverage meeting the requirements of this section for all periods of time in which the alarm company is licensed in this state as an alarm company.

R156-55d-302f. Qualifications for Licensure -- Good Moral Character -- Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-55-302(3)(k)(vii) and (3)(l)(iii), the following is a list of criminal convictions which may disqualify a person from obtaining or holding a burglar alarm company or a burglar alarm company agent's license:

(a) crimes against a person as defined in Title 76, Chapter 5, Parts 1 and 2;

(b) theft/larceny, including retail theft, as defined in Title 76, Chapter 6;

(c) sex offenses as defined in Title 76, Chapter 5, Part 4;

(d) any offense involving controlled substances;

(e) fraud;

(f) forgery;

(g) perjury, obstructing justice and tampering with evidence;

(h) conspiracy to commit any of the offenses listed herein;

(i) burglary

(j) escape from jail, prison or custody;

(k) false or bogus checks;

(l) pornography;

(m) any attempt to commit any of the above offenses; or

(n) two or more convictions for driving under the influence of alcohol within the last three years.

(2) Applications for licensure or renewal of licensure shall be considered on a case by case basis taking into consideration the following:

(a) the conduct involved;

(b) the potential or actual injury caused by the applicant's conduct; and

(c) the existence of aggravating or mitigating factors.

R156-55d-303. Renewal Cycle -- Procedure.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55, is established by rule in Section R156-1-308a(1).

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

R156-55d-304. Renewal Requirement -- Demonstration of Clear Criminal History.

(1) In accordance with Subsections 58-1-203(1), 58-1-308(3)(b), and 58-55-302(4), there is created as a requirement for renewal or reinstatement of any license of an alarm company or alarm company agent a demonstration of clear criminal history for each alarm company qualifying agent and for each alarm company agent.

(2) The 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 the applicant has a criminal history, the Division shall evaluate the criminal history in accordance with Sections 58-55-302 and R156-5d-302f to determine appropriate licensure action.

R156-55d-306. Change of Qualifying Agent.

In accordance with Subsection 58-55-304(6), an alarm company whose qualifier has ceased association or employment shall file with the Division an application for change of qualifier on forms provided by the Division accompanied by a record of criminal history or certification of no record of criminal history and a fee established by the Division.

R156-55d-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

(a) failing as an alarm company to notify the Division of the cessation of performance of its qualifying agent or failing to replace its qualifying agent as required under Section R156-55d-306;

(b) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section R156-55d-601;

(c) failing as an alarm agent to carry or display a copy of his Electronic Security Association (ESA) level one certification or equivalent training as required under Section R156-55d-603;

(d) employing as an alarm company a qualifying agent or alarm company agent knowing that individual has engaged in conduct inconsistent with the duties and responsibilities of an alarm company agent.

(e) failing to comply with operating standards established by rule;

(f) failing as a burglar alarm company or a burglar alarm company agent to report an arrest, charge, indictment, or violation as required by Subsection R156-55d-605;

(g) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or a settlement or agreement whereby an individual has entered into participation as a first offender, or an action of deferred adjudication, or other program or arrangement where judgment or conviction is withheld;

(h) making false, misleading, deceptive, fraudulent, or exaggerated claims by an alarm company agent; and

(i) an alarm business or company having a residential or commercial false alarm rate 100% above the average of the residential or commercial false alarm rate of the municipality or county jurisdiction in which the alarm business or company's alarm systems are located.

(2) Unprofessional conduct by an alarm company agent, whether compensated as a W-2 employee or compensated in accordance with 26 U.S.C. Section 3508 as a direct seller, may also be unprofessional conduct of the alarm company employing the alarm company agent.

R156-55d-503. Administrative Penalties.

The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are

hereby adopted and incorporated by reference.

R156-55d-601. Display of License.

An alarm company agent shall carry on his person at all times while acting as an alarm company agent a copy of his license and shall display that license upon the request of any person to whom the agent is representing himself as an alarm company agent, and upon the request of any law enforcement officer or representative of the Division.

R156-55d-602. Operating Standards -- Alarm Equipment.

In accordance with Subsection 58-55-308(1), the following standards shall apply with respect to equipment and devices assembled as an alarm system:

(1) An alarm system installed in a business or public building shall utilize equipment equivalent to or exceeding minimum Underwriters Laboratories, or the National Electrical Code standards for alarm system equipment.

(2) An alarm system installed in a residence shall utilize equipment equivalent to or exceeding minimum Underwriters Laboratories, or the National Electrical Code standards for residence alarm systems.

R156-55d-603. Operating Standards -- Alarm Installer.

In accordance with Subsection 58-55-308(1), the operating standards for the installer of an alarm system include the following:

(1) An alarm agent must be fully trained in the installation of an alarm system in accordance with the Electronic Security Association (ESA) level one certification or equivalent training requirements prior to the alarm agent installing any alarm system in any residence, business, or public building within the state.

(2) An alarm agent upon receiving initial licensure may work under the direct supervision of an alarm agent who has level one certification for a period of six months from the time of initial licensure without being required to hold a level one certificate.

(3) An alarm agent shall carry evidence of the ESA level one certification or equivalent training with him at all times.

R156-55d-604. Operating Standards -- Alarm System User Training.

In accordance with Subsection 58-55-308(1), the operating standards for the installation of an alarm system including the following:

(1) Upon completion of the installation of an alarm system by an alarm company, the installing alarm agent shall review with the alarm user, or in the case of a business with its employees, the operation of the alarm system to ensure that the user understands the function of the alarm system.

(2) The alarm company shall maintain training records, including installer and user false alarm prevention checklists, the dates of the training and the location of the training on each alarm system installed. These records shall be maintained in the files of the alarm company for at least three years from the date of the training.

R156-55d-605. Operating Standards -- Standards of Conduct.

In accordance with Subsection 58-55-302(k)(iii)(B)(vii), the following standards shall apply with respect to notifying the Division of an arrest, charge, indictment, or violation.

(1) A licensed burglar alarm company agent shall notify the licensee's employing burglar alarm company within 72 hours of being arrested, charged, or indicted for any criminal offense above the level of a Class C misdemeanor.

(2) Within 72 hours after receiving notification pursuant to Subsection (1), the employing burglar alarm company shall provide written notification to the Division of the arrest, charge, indictment, or violation.

(3) The written notification required under Subsection (2) shall include:

(a) the employee's name;

(b) the name of the arresting agency, if applicable;

(c) the agency case number or similar case identifier;

(d) the date of the arrest, charge, indictment, or violation; and

(e) the nature of the criminal offense or violation.

KEY: licensing, alarm company, burglar alarms

March 24, 2016	**58-55-101**
Notice of Continuation January 19, 2017	**58-1-106(1)(a)**
	58-1-202(1)(a)
	58-55-302(3)(k)
	58-55-302(3)(l)
	58-55-302(4)
	58-55-308

R156. Commerce, Occupational and Professional Licensing.
R156-56. Building Inspector and Factory Built Housing Licensing Act Rule.
R156-56-101. Title.

This rule is known as the "Building Inspector and Factory Built Housing Licensing Act Rule".

R156-56-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 55 and 56, as used in Title 58, Chapter 56 or this rule:

(1) "Board" means the Building Inspector Licensing Board created in Section 58-56-8.5.

(2) "Employed by a local regulator, state regulator or compliance agency" means, with respect to Subsection 58-56-9(1), the hiring of services of a qualified inspector whether by an employer/employee relationship, an independent contractor relationship, a fee-for-service relationship or any other lawful arrangement under which the regulating agency purchases the services of a qualified inspector.

(3) "Inspector" means a person employed by a local regulator, state regulator or compliance agency for the purpose of inspecting building, electrical, plumbing or mechanical construction, alteration, remodeling, repair or installation in accordance with the state construction codes adopted under Title 15A and taking appropriate action based upon the findings made during inspection.

R156-56-103. Authority.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 56.

R156-56-104. 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.

R156-56-201. Building Inspector Licensing Board.

In accordance with Section 58-56-8.5, the board shall be as follows:

(1) one member licensed as a Combination Inspector;

(2) one member licensed as an Inspector who is qualified in the electrical code;

(3) one member licensed as an Inspector who is qualified in the plumbing code;

(4) one member licensed as an Inspector who is qualified in the mechanical code; and

(5) one member shall be from the general public.

R156-56-301. Reserved.

Reserved.

R156-56-302. Qualifications for Licensure of Inspectors - Application Requirements.

In accordance with Subsection 58-56-9(1), the licensee classifications, scope of work, qualifications for licensure, and application for license are established as follows:

(1) License Classifications. Each inspector required to be licensed under Subsection 58-56-9(1) shall qualify for licensure and be licensed by the Division in one of the following classifications:

(a) Combination Inspector; or

(b) Limited Inspector.

(2) Scope of Work. The scope of work permitted under each inspector classification is as follows:

(a) Combination Inspector.

(i) Inspect the components of any building, structure or work for which a standard is provided in the specific edition of the state construction codes adopted under Title 15A.

(ii) Determine whether the construction, alteration, remodeling, repair or installation of all components of any building, structure or work is in compliance with the state construction code adopted under Title 15A.

(iii) After determination of compliance or noncompliance with the state construction codes adopted under Title 15A, take appropriate action as is provided in the aforesaid codes.

(b) Limited Inspector.

(i) A Limited Inspector may only conduct activities under Subsections (ii), (iii) or (iv) for which the Limited Inspector has maintained current certificates under state construction codes adopted under Title 15A as provided under Subsection R156-56-302(3)(b).

(ii) Subject to the limitations of Subsection (i), inspect the components of any building, structure or work for which a standard is provided in the state construction codes adopted under Title 15A.

(iii) Subject to the limitations under Subsection (i), determine whether the construction, alteration, remodeling, repair or installation of components of any building, structure or work is in compliance with the state construction codes adopted under Title 15A.

(iv) Subject to the limitations under Subsection (i), after determination of compliance or noncompliance with the state construction codes adopted under Title 15A, take appropriate action as is provided in the adopted codes.

(3) Qualifications for Licensure. The qualifications for licensure for each inspector classification are as follows:

(a) Combination Inspector.

Has passed the examination for and maintained as current the following national certifications for state construction codes adopted under Title 15A:

(i) the "Combination Inspector Certification" issued by the International Code Council; or

(ii) all of the following certifications:

(A) the "Building Inspector Certification" issued by the International Code Council or both the "Commercial Building Inspector Certification" and the "Residential Building Inspector Certification" issued by the International Code Council;

(B) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of Electrical Inspectors, or both the "Commercial Electrical Inspector Certification" and the "Residential Electrical Inspector Certification" issued by the International Code Council;

(C) the "Plumbing Inspector Certification" issued by the International Code Council, or both the "Commercial Plumbing Inspector Certification" and the "Residential Plumbing Inspector Certification" issued by the International Code Council; and

(D) the "Mechanical Inspector Certification" issued by the International Code Council or both the "Commercial Mechanical Inspector Certification" and the "Residential Mechanical Inspector Certification" issued by the International Code Council.

(b) Limited Inspector.

Has passed the examination for and maintained as current one or more of the following national certifications for state construction codes adopted under Title 15A:

(i) the "Building Inspector Certification" issued by the International Code Council;

(ii) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of Electrical Inspectors;

(iii) the "Plumbing Inspector Certification" issued by the International Code Council;

(iv) the "Mechanical Inspector Certification" issued by the International Code Council;

(v) the "Residential Combination Inspector Certification" issued by the International Code Council;

(vi) the "Commercial Combination Certification" issued by the International Code Council;

(vii) the "Commercial Building Inspector Certification" issued by the International Code Council;

(viii) the "Commercial Electrical Inspector Certification" issued by the International Code Council;

(ix) the "Commercial Plumbing Inspector Certification" issued by the International Code Council;

(x) the "Commercial Mechanical Inspector Certification issued by the International Code Council;

(xi) the "Residential Building Inspector Certification" issued by the International Code Council;

(xii) the "Residential Electrical Inspector Certification" issued by the International Code Council;

(xiii) the "Residential Plumbing Inspector Certification" issued by the International Code Council;

(xiv) the "Residential Mechanical Inspector Certification" issued by the International Code Council;

(xv) any other special or otherwise limited inspector certifications used by the International Code Council which certifications cover a part of the state construction codes adopted under Title 15A, including but not limited to each of the following: Reinforced Concrete Special Inspector, Prestressed Concrete Special Inspector, Structural Masonry Special Inspector, Structural Steel and Bolting Special Inspection, Structural Welding Special Inspection, Spray Applied Fire Proofing Special Inspector, Residential Energy Inspector, Commercial Energy Inspector;

(xvi) the Certified Welding Inspector Certification issued by the American Welding Society;

(xvii) any other certification issued by an agency specified in Chapter 17 of the International Building Code ("IBC") or an agency specified in the referenced standards; or

(xviii) any combination certification which is based upon a combination of one or more of the above listed certifications.

(c) If no qualification is listed in the IBC for a special inspector, the special inspector may submit his qualifications to the licensing board for approval.

(4) Application for License.

(a) An applicant for licensure shall:

(i) submit an application in a form prescribed by the Division; and

(ii) pay a fee determined by the department pursuant to Section 63J-1-504.

(5) Code Transition Provisions.

(a) If an inspector or applicant obtains a new, renewal or recertification or replacement national certificate after a new code or code edition is adopted, the inspector or applicant is required to obtain that certification under the currently adopted code or code edition.

(b) After a new code or new code edition is adopted under this rule, the inspector is required to re-certify the inspector's national certification to the new code or code edition at the next available renewal cycle of the national certification.

(c) If a licensed inspector fails to obtain the national certification as required in Subsection (a) or (b), the inspector's authority to inspect for the area covered by the national certification automatically expires at the expiration date of the national certification that was not obtained as required.

(d) If an inspector recertifies a national certificate on a newer edition of the codes adopted before that newer edition is adopted under this rule, such recertification shall be considered as a current national certification as required by this rule.

(e) If an inspector complies with these transition provisions, the inspector shall be considered to have a current national certification as required by this rule.

R156-56-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year cycle applicable to licenses under Title 58, Chapter 56 is established by rule in Section R156-1-308a.

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

R156-56-401. Factory Built Housing and Modular Unit Contractor Continuing Education.

In accordance with Subsection 15A-1-306(1)(f)(ii), continuing education required for factory built housing installation contractors and modular construction installation contractors is as stated in Subsection 58-55-303(2)(b).

R156-56-402. Factory Built Housing Dealer Bonds.

(1) In accordance with Subsection 58-56-16(2)(c), a factory built housing dealer shall provide a registration bond issued by a surety acceptable to the Division in the amount of $50,000. An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, current revision, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".

(2) The coverage of the registration bond shall include losses that may occur as the result of the factory built housing dealer's violation of the unprofessional or unlawful conduct provisions contained in Title 58, Chapters 1 and 56.

R156-56-501. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-56-9.1, 58-56-9.3, and 58-56-9.5, unless otherwise ordered by the presiding officer, the following fine schedule shall apply:

(1) Engaging in the sale of factory built housing without being registered.

First offense: $500

Second offense: $1,000

(2) Selling factory built housing within the state as a dealer without collecting and remitting to the Division the fee required by Section 58-56-17.

First offense: $500

Second offense: $1,000

(3) Acting as a building inspector or representing oneself to be acting as a building inspector, unless licensed or exempted from licensure under Title 58, Chapter 56 or using the title building inspector or any other description, words, letters, or abbreviation indicating that the person is a building inspector if the person has not been licensed under Title 58, Chapter 56.

First offense: $500

Second offense: $1,000

(4) Acting as a building inspector beyond the scope of the license held.

First offense: $500

Second offense: $1,000

(5) Hiring or employing in any manner an unlicensed person as a building inspector, unless exempted from licensure.

First offense: $800

Second offense: $1,600

(6) 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 Section 58-56-9.5.

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

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

(9) In all cases the presiding officer shall have the discretion, after a review of the aggravating or mitigating circumstances, to increase or decrease the fine amount based on

the evidence reviewed.

R156-56-502. Reserved.
Reserved.

KEY: factory built housing, building inspections, licensing, building inspectors
August 22, 2013 **58-1-106(1)(a)**
Notice of Continuation January 10, 2017 **58-1-202(1)(a)**
58-56-1

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 than 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 58-64-101

Notice of Continuation January 10, 2017 58-1-106(1)(a)
58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-78B. Prelitigation Panel Review Rule.
R156-78B-1. Title.

This ruleis known as the "Prelitigation Panel Review Rule".

R156-78B-2. Definitions.

In addition to the definitions in Section 78B-3-403, which shall apply to this rule:

(1) "Answer" means a responsive answer to a request.

(2) "Date of the panel's opinion", "issuance of an opinion", and "issue an opinion", as used in Subsections 78B-3-423(1)(a)(i), 78B-3-416(3)(a)(i)(A), and 78B-3-418(1)(a), respectively, mean the date the Division issues a panel opinion filed with the Division by a prelitigation panel.

(3) "Director" means the Director of the Division of Occupational and Professional Licensing.

(4) "File", "filing", or "filed" means a pleading or document filed with the Division with service to all parties as required in Section R156-78B-7.

(5) "Findings", "conclusions", "determinations", or "results", as used in Section 78B-3-419, means a written outcome of a prelitigation panel whether each claim against each health care provider has merit, and if meritorious, whether the conduct complained of resulted in harm to the claimant.

(6) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, enacted by Congress in Pub. L. No 104-91 as implemented by 45 CFR Parts 160 and 164, as amended.

(7) "Issue" or "issued", as it relates to a written action or notice permitted or required from the Division, means the finalization of an action or notice by the Division as reflected by an authorized signature and date on the action or notice.

(8) "Meritorious claim" means that there is a basis in fact and law to conclude that the standard of care has been breached and the petitioner has been injured thereby, such that the petitioner has a reasonable expectation of prevailing at trial.

(9) "Motion" means a request for any action or relief permitted under Sections 78B-3-416 through 78B-3-420 or this rule.

(10) "Nonmeritorious claim" means that the evidence before the panel is insufficient to conclude that the case is meritorious, but does not necessarily mean the case is frivolous.

(11) "Notice" means a notice of intent to commence action under Section 78B-3-412.

(12) "Panel" means the prelitigation panel appointed in accordance with Subsection 78B-3-416(4) to review a request.

(13)(a) "Panel opinion" or "opinion" as shortened in context with reference to a panel opinion, as used in Sections 78B-3-418, 78B-3-419, and 78B-3-423, means the supplemental memorandum opinion rendered by the prelitigation panel as required by Subsection R156-78B-14(2), that articulates the basis for the panel's findings, determinations or results as to whether each claim against each health care provider has merit and, if meritorious, whether the conduct complained of resulted in harm to the claimant.

(b) If a supplemental memorandum opinion is not timely rendered by the prelitigation panel, "panel opinion" or "opinion" means the prelitigation panel findings, conclusions, determinations, or results.

(14) "Party" means a petitioner or respondent.

(15) "Person" means any natural person, sole proprietorship, joint venture, corporation, limited liability company, association, governmental subdivision or agency, or organization of any type.

(16) "Petitioner" means any person who files a request with the Division.

(17) "Pleadings" include the requests, answers, motions, briefs and any other documents filed by the parties to a request.

(18) "Request" means a request for prelitigation panel review under Section 78B-3-416.

(19) "Respondent" means any health care provider named in a request.

(20) "Service" means service as set forth in Subsection R156-78B-7.

R156-78B-3. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 78B-3-416(1)(b) to define, clarify, and establish the process and procedures which govern prelitigation panel reviews.

R156-78B-4. General Provisions.

(1) Purpose.

This rule is intended to secure the just, speedy and economical determination of all issues presented to the Division.

(2) Deviation from Rule.

Except as otherwise required by Title 78B, Chapter 3, the Division may permit a deviation from this rule when it finds compliance to be impractical or unnecessary.

(3) Computation of Time.

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday or a state holiday, and then it is excluded and the period runs until the end of the next day which is a scheduled workday for the Division. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period.

R156-78B-5. Representations - Appearances.

(1) Representation of Parties.

(a) A party may be represented by counsel or may represent onself individually, or if not an individual, may represent itself through an officer or employee. For the purpose of this provision, the term "counsel" means active members of the Utah State Bar or active members of any other state bar.

(b) Counsel from a foreign licensing state shall submit a notice of appearance to the presiding officer along with a certificate of good standing from the foreign licensing state.

(2) Entry of Appearance of Representation.

Parties shall promptly enter their appearances by giving their names and addresses and stating their positions or interests in the proceeding. When possible, appearances shall be entered in writing concurrently with the filing of the request for petitioner and no later than 10 days from service of the request for respondent.

R156-78B-6. Pleadings.

(1) Docket Number and Title.

Upon receipt of a timely Request for Prelitigation Review, the Division shall assign a two letter code identifying the matter as involving this type of request (PR), a two digit code indicating the year the request was filed, a two digit code indicating the month the request was filed, and another number indicating chronological position among requests filed during the month. The Division shall give the matter a title in substantially the following form:

TABLE I

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

John Doe,

Petitioner	Request for Prelitigation Review
-vs-	
Richard Roe, Respondent	No. PR-XX-XX-XXX

(2) Form and Content of Pleadings.

Pleadings must be double-spaced and typewritten and presented on standard 8 1/2" x 11" white paper. They must identify the proceeding by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate prayer for relief when relief is sought. A request shall, by affirmation, set forth the date that the required notice was served, shall include a copy of the notice and shall reflect service of the request upon all parties named in the notice and request. When a petitioner fails to attach a copy of the notice to petitioner's request, the Division shall return the request to the petitioner with a written notice of incomplete request and conditional denial thereof. The notice shall advise the petitioner that his request is incomplete and that the request is denied unless the petitioner corrects the deficiency within the time period specified in the notice and otherwise meets all qualifications to have the request granted.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or their counsel of record and shall indicate the addresses of the party and, if applicable, their counsel of record. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

(4) Answers.

A respondent named in a request may file an answer relative to the merits set forth in the petitioner's notice. Affirmative defenses shall be separately stated and numbered in an answer or raised at the time of the hearing. Any answer must be filed no later than 15 days following the filing of the request.

(5) Motions.

(a) Motions to be Filed in Writing.

Motions shall be in writing unless the motion could not have been anticipated prior to the prelitigation panel hearing.

(b) Time Periods for Filing Motions and Responding Thereto.

(i) Motions to Withdraw a Request.

Any motion to withdraw a request shall be filed no later than five days before the prelitigation panel hearing.

(ii) Motions Directed Toward a Request.

Any motion directed toward a request shall be filed no later than 15 days after service of the request.

(iii) Motions Directed Toward the Composition of a Panel.

Any motion directed toward the composition of a panel shall be filed no later than five days after discovering a basis therefore.

(iv) Motions to Dismiss.

Any motion to dismiss shall be filed no later than five days after discovering a basis therefore.

(v) Extraordinary Motions for Discovery or Perpetuation of Evidence.

Any motion seeking discovery or perpetuation of evidence for good cause shown demonstrating extraordinary circumstances shall be filed no later than 15 days before the prelitigation panel hearing.

(vi) Response to a Motion.

A response to a motion shall be filed no later than five days after service of the motion and any final reply shall be filed no later than five days after service of the response to the motion.

(c) Affidavits and Memoranda.

The Division or panel shall permit and may require affidavits and memoranda, or both, in support or contravention of a motion.

(d) The Division or panel may permit or require oral argument on a motion.

R156-78B-7. Filing and Service.

(1) Filing of Pleadings. All pleadings shall be filed with the Division with service thereof to all parties named in the notice. The Division may refuse to accept pleadings if they are not filed in accordance with the requirements of this rule.

(2) Process for Service.

(a) All pleadings and documents issued by the Division or panel that are required to be served shall at the option of the Division be served by personal service, first class mail, registered mail, certified mail, or by express mail. Personal service shall be made upon a party in accordance with the Utah Rules of Civil Procedure by any peace officer within the State of Utah or by any person specifically designated by the Division.

(b) A request for a prelitigation proceeding filed by a petitioner shall be served in accordance with the same process for service required for a notice of intent as set forth in Subsection 78B-3-412(3). All other pleadings or documents filed by a party shall at the option of the party be served by personal service, first class mail, registered mail, certified mail, or by express mail.

(c) When an attorney has entered an appearance on behalf of any party, service upon that attorney constitutes service upon the party so represented.

(3) Proof of Service.

(a) There shall appear on all pleadings or documents required to be served a certificate of service certifying the appropriate method of service as set forth in Subsection (2), in substantially the following form:

TABLE II

I hereby certify that I have this day served the foregoing document upon the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed by first class mail) (by registered mail) (by certified mail) (by certified mail, return receipt requested) (by type of express mail):

(Name of parties of record)
(addresses)

Dated this (day) day of (month), (year).

(Signature)
(Title)

(b) Any pleading or document filed with the Division shall be accompanied by documentation of the service reflected in the certificate of service.

(4) Date of Service.

Pleadings or documents shall be considered served on the date of personal service or mailing date, as set forth in Subsection (2).

R156-78B-8. Panel Selection and Compensation.

(1) The Division shall commence the selection and appointment of panel members following the issuance of a notice of hearing pursuant to this rule.

(2) The selection and appointment of panel members shall be in accordance with Subsections 78B-3-416(4) and (5).

(3) (a) In accordance with Subsection 78B-3-416(4), whenever multiple respondents are identified in a request, the Division shall select and appoint a panel to sit in consideration of all claims against any respondent as follows:

(i) one lawyer member who is the chairman in accordance with Subsection 78B-3-416(4)(a);

(ii) one lay panelist member in accordance with Subsection 78B-3-416(4)(c);

(iii) one licensed health care provider who is practicing and knowledgeable for each specialty represented by the respondents in accordance with Subsection 78B-3-416(4)(b)(i); and

(iv) if a hospital or their employees are named as a respondent, one member who is an individual currently serving in a hospital administration position directly related to hospital operations or conduct that includes responsibility for the area of practice that is the subject of the liability claim, in accordance with Subsection 78B-3-416(4)(b)(ii).

(b) The distinction between a hospital administrator and a person serving in a hospital administration position referenced in Subsection 78B-3-416(4)(b)(ii) is significant and is hereby emphasized.

(c) The person serving in a hospital administration position referenced in Subsection 78B-3-416(4)(b)(ii) shall be from a different facility than the facility which is the subject of the alleged medical liability case, but may be from the same umbrella organization provided the panel member certifies under oath that he is free from bias or conflict of interest with respect to any matter under consideration as required by Subsection 78B-3-416(6).

(d) Petitioner and respondent may stipulate concerning the type of health care provider to be selected and appointed by the Division, unless the stipulation is in violation with the panel composition requirements set forth in Subsection 78B-3-416(4)(b).

(4) Upon stipulation of all parties, a motion to evaluate damages may be submitted to the Division whereupon the Division may appoint an additional panel member to assist in evaluating damages.

(5) The Division shall ensure that panelists possess all qualifications required by statute and this rule.

(6) Upon appointment to a prelitigation panel, each member thereof shall sign a written affirmation in substantially the following form:

TABLE III

I, (panel member), hereby affirm that, as a member of a prelitigation panel, I will discharge my responsibilities without bias towards any party. I also affirm that, to the best of my knowledge, no conflict of interest exists as to any matter which will be entrusted to my consideration as a panel member.

Dated this (day) day of (month), (year).

(Signature)

(7) Panel members shall be entitled to per diem compensation and travel expenses according to a schedule as established and published by the Division.

R156-78B-9. Action upon Request - Scheduling Procedures - Continuances.

(1) Action upon Request.

Upon receiving a request, the Division shall issue an order approving or denying the request.

(2) Criteria for Approving or Denying a Request.

The criteria for approving or denying a request shall be whether:

(a) the request is timely filed in accordance with Subsection 78B-3-416(2)(a);

(b) the request includes a copy of the notice in accordance with Subsection 78B-3-416(2)(b) and documentation that the notice was served in accordance with Section 78B-3-412; and

(c) the request has been mailed to all health care providers named in the notice and request as required by Subsection 78B-3-416(2)(b).

(3) Legal Effect of Denial of Request.

The denial of a request restarts the running of the applicable statute of limitations until an appropriate request is filed with the Division.

(4) Scheduling Procedures.

(a) If a request is approved, the order approving the request shall direct the party who made the request to contact all parties named in the request and notice to determine by agreement of the parties:

(i) what type of health care provider panelists are requested;

(ii) at least two dates acceptable to all parties on which a prelitigation panel hearing may be scheduled; and

(iii) whether or not the case will be submitted in accordance with Section R156-78B-13 and if so, the nature of the submission.

(b) The order shall direct the party who made the request to file the scheduling information with the Division, on forms available from the Division, no later than 20 days following the issuance of the order.

(c) If the party so directed fails to comply with the directive without good cause, the Division may schedule the hearing without further input from the party.

(d) No later than five days following the filing of the approved form, the Division shall issue a notice of hearing setting a date, time and a place for the prelitigation panel hearing. No hearing shall take place within the 35 day period immediately following the filing of a Request for Prelitigation Review, unless the parties and the Division consent to a shorter period of time.

(e) The Division shall thereafter promptly select and appoint a panel in accordance with Subsections 78B-3-416(4) and (5) and this rule.

(5) Continuances.

(a) Standard.

In order to prevail on a motion for a continuance the moving party must establish:

(i) that the motion was filed no later than five days after discovering the necessity for the motion and at least two days before the scheduled hearing;

(ii) that extraordinary facts and circumstances unknown and uncontrollable by the party at the time the hearing date was established justify a continuance;

(iii) that the rights of the other parties, the Division, and the panel will not be unfairly prejudiced if the hearing is continued; and

(iv) that a continuance will serve the best interests of the goals and objectives of the prelitigation panel review process.

(b) If a continuance is granted, the order shall direct the party who requested the continuance to contact all parties named in the request and notice to establish no less than two dates acceptable to all parties, on which the prelitigation panel hearing may be rescheduled.

(c) The order shall direct the party who requested the continuance to file the scheduling information with the Division, on forms approved by the Division, no later than five days following the issuance of the order.

(d) If a party so directed is the petitioner and the petitioner fails to comply with the directive without good cause, the Division shall dismiss the request without prejudice. Upon issuance of the order of dismissal by the Division, the applicable statute of limitations on the cause of action shall no longer be tolled. The petitioner shall be required to file another request prior to the scheduling of any further proceeding and, until this request is filed, the statute of limitations shall continue to run.

(e) If a party so directed is the respondent and the respondent fails to comply with the directive without good cause, the Division may establish a date for the prelitigation panel hearing acceptable to petitioner and disallow any further motions for continuances from respondent.

(f) No later than three days following the filing of the dates, the Division shall issue a notice of hearing resetting a

date, time and a place for the prelitigation panel hearing.

(6) Requests Made By Incarcerated Person.

(a) If a request, notice, or other documentation indicates that the alleged malpractice occurred while the petitioner was incarcerated and the alleged malpractice claim is against the State of Utah, its agencies or employees, the request shall be denied based upon Subsection 63G-7-301(5)(j).

(b) Subsequent requests by or communications from a petitioner whose request has been denied under this subsection will not receive response unless the petitioner files an amended request and notice that demonstrates:

(i) that the alleged malpractice did not occur while the petitioner was incarcerated; or

(ii) that the alleged malpractice claim is not against the State of Utah, its agencies or employees or as provided in Section 63G-7-202.

R156-78B-10. Consequences of Failure to Appear at a Scheduled Hearing.

(1) Except as provided by Section R156-78B-13:

(a) If a party or a representative appointed by the party fails to appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the hearing shall proceed in the party's absence and the party shall lose the right to present any further evidence to the panel.

(b) If neither party nor their representatives appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the Division shall dismiss the request without prejudice. The dismissal shall terminate the tolling of the applicable statute of limitations under Subsection 78B-3-416(3).

R156-78B-11. Prehearing Conferences.

The Division may, in exceptional circumstances as approved by a panel chair, upon written notice to all parties of record, schedule a prehearing conference with the panel for the purposes of formulating or simplifying the issues, obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, and agreeing to other matters as may expedite the orderly conduct of the prelitigation proceeding or the settlement thereof. Agreements reached during the conference shall be recorded in an appropriate order unless the parties enter into a written stipulation on the matters or agree to a statement thereof made on the record by the chairman of the panel.

R156-78B-12. Hearing Procedures.

(1) Authority Governing Hearing Procedures.

Prelitigation panel hearings are informal as provided by Subsection 78B-3-416(1)(c) and are not governed by Title 63G, Chapter 4, Utah Administrative Procedures Act, and they are closed to the public as provided by Subsection 78B-3-417(5)(a).

(2) Duration of Prelitigation Hearings.

The duration of a prelitigation hearing shall be limited to two hours except as otherwise permitted to be extended in duration by the panel chair.

(3) Hearings Closed to the Public.

In accordance with Subsection 78B-3-417(5)(a), prelitigation hearings are closed to the public.

(4) Attendance of Panel Members.

Except where a case is submitted in written form in accordance with Section R156-78B-13, all panel members appointed shall be present during the entire hearing.

(5) Order of Presentation of Evidence.

Unless otherwise directed by the panel at the hearing, the order of procedure and presentation of evidence will be as follows:

(a) Petitioner;

(b) Respondent; and

(c) Petitioner, if the panel chair permits petitioner to present rebuttal evidence.

(6) Method of Presentation of Evidence.

Evidence may be presented by any party on a narrative basis or through direct examination of said party by their counsel of record. The panel may make inquiry of any party pertinent to the issues to be addressed. If a motion to evaluate damages has been granted, the panel may properly take evidence as to that issue. As set forth in Section 78B-3-417, no party has the right to cross-examine, rebut, or demand that customary formalities of civil trials and court proceedings be followed. The panel may, however, request special or supplemental participation of some or all parties in particular respects, including oral argument, evidentiary rebuttal, or submission of briefs.

(7) Rules of Evidence.

Formal rules of evidence are not applicable. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent people in the conduct of their affairs. The panel shall give effect to the rules of privilege recognized by law. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.

(8) Burden of Proof.

The petitioner shall be responsible for establishing a meritorious claim against any respondent, and if the issue of damages is presented, the amount of damages.

(9) Standard of Proof.

The standard of proof for prelitigation hearings is a preponderance of the evidence.

(10) Use of Evidence.

Use of evidence, documents, and exhibits submitted to a panel shall be in accordance with Subsection 78B-3-417(1) and Section 78B-3-418.

(11) Record of Hearing.

On its own motion, the panel may record the proceeding for the sole purpose of assisting the panel in its subsequent deliberation and issuance of an opinion. The record may be made by means of tape recorder or other recording device. No tape recorder or other device shall be used by anyone otherwise present during the proceeding to record the matter. Upon issuance by the panel of its opinion, the record of the proceeding shall be destroyed.

(12) Subpoenas - Discovery and Perpetuation of Testimony.

(a) Subpoenas for Medical Records Authorized - Discovery and Perpetuation of Testimony Prohibited.

The Division may issue subpoenas for the production of medical records directly related to a claim of medical liability in accordance with Subsection 78B-3-417(2) and (3). However, except as permitted by Subsection 78B-3-417(2) and (3) and in accordance with Subsection 78B-3-417(4), there is not discovery or perpetuation of testimony in prelitigation panel hearings, except upon special order of the panel, and for good cause shown demonstrating extraordinary circumstances.

(b) Requirements and Process for Issuance of Subpoenas for Medical Records.

A request for a subpoena for medical records shall be prepared by the person requesting it in proper form for issuance by the Division and shall be supported by:

(i) a written release for the medical records signed by the individual who is the subject of the medical record or by that individual's guardian or conservator; or

(ii) an affidavit prepared by the person requesting the subpoena which shall include the indicated text:

TABLE IV

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I hereby certify:
(1) that the medical record subject to the requested
subpoena is believed by the person requesting the subpoena
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("requester") to be directly related to the medical liability claim to which the subpoena is related;

(2) that the requester will comply with the requirements of HIPAA as set forth in 45 CFR 164.512(e), which governs the release of protected health information in the course of administrative proceedings;

(3) that more specifically with regard to the requirements of HIPAA, the requester will provide a written statement and documentation to the covered entity from whom the medical records are sought demonstrating satisfactory assurances that:

(a) the requestor provided the subject of the records notice of the subpoena, information about the governing prelitigation proceeding, a time period to object to the release of the subject's medical records, and that either no objections were filed or that objections were filed but resolved by a court of competent jurisdiction and the subpoena is consistent with the resolution, as specified in 45 CFR 164.512(e)(1)(ii)(A) and detailed in 45 CFR 164.512 (e)(1)(iii); or

(b) the parties to the prelitigation proceeding have agreed to a qualified protective order and have presented it to a court of competent jurisdiction or the requestor has requested a qualified protective order from a court of competent jurisdiction, as specified in CFR 164.512(e)(1)(ii)(B) and detailed in 45 CFR 164.512(3)(1)(iv); and

(4) that if the recipient of the subpoena for medical records fails or refuses to comply with the subpoena, the requester understands that resolution of the issues regarding the subpoena needs to be through a court of competent jurisdiction.

R156-78B-13. Submission of Case in Written Form, by Proffer, or a Combination thereof - Requirements.

(1) A full prelitigation panel hearing is not required if the parties enter into a stipulation that no useful purpose would be served by convening a panel hearing as to any or all respondents or if the parties agree to submit their case as to any or all respondents to the panel in written form, by proffer of evidence, or by a combination thereof.

(2) Any case submitted in writing must include a legal argument addressing the relevant evidence and law with regard to the issues presented in the case.

R156-78B-14. Determination - Supplemental Opinion - Issuance of Panel Opinion - Certificate of Compliance.

(1) Panel Determination.

As soon as is reasonably practicable following the conclusion of a hearing or submission of a case to the panel in accordance with Section R156-78B-13, and, if applicable, submission of briefs by the parties, the panel shall render and file with the Division a determination whether each claim against each health care provider has merit or has no merit, and if meritorious whether the conduct complained of resulted in harm to the claimant. If applicable, the determination shall also reflect the panel's evaluation of the damages sustained by the petitioner.

(2) Supplementary Memorandum Opinion.

Within 30 days after filing its determination, the panel shall render and file with the Division a memorandum opinion explaining the panel's determination. The chairman of the panel shall be responsible for the preparation of the memorandum opinion of the panel, but may delegate the initial preparation of the opinion to another member of the panel.

(3) Issuance of Panel Determination and Opinion.

In accordance with Subsections 78B-3-416(3)(a)(i)(A) and 78B-3-418(1)(a), it is the responsibility of a prelitigation panel to render its panel determination and opinion and file them with the Division, and the Division's responsibility to issue the panel determination and opinion.

(4) Certificate of Compliance.

(a) The Director or designee shall issue a certificate of compliance which recites that the petitioner has fully complied with the prelitigation panel requirements of Title 78B, Chapter 3, as follows:

(i) in the case of a meritorious finding or determination, the Division shall issue the certificate of compliance to the petitioner within 15 days after:

(A) the filing of the panel's memorandum opinion; or

(B) in the case of the panel's memorandum opinion not being filed, within 15 days after the deadline for the filing of the memorandum opinion;

(ii) in the case of a determination made under Subsection 78B-3-416(3)(d)(ii)(A), within 15 days after petitioner's filing of an affidavit of respondent's failure to reasonably cooperate in the scheduling of a prelitigation hearing;

(iii) in the case of a submission of a written stipulation that no useful purpose would be served by convening a prelitigation panel submitted under Subsection 78B-3-416(3)(e), within 15 days after the filing of the stipulation; and

(iv) in all other cases where an affidavit of merit is required as specified by Section 78B-3-423, within 15 days after the timely filing of the affidavit of merit.

(b) The Division shall include with its service of a certificate of compliance copies of supporting documentation including the applicable panel determination or finding, supplemental memorandum opinion, determination on petitioner's affidavit of respondent's failure to reasonably cooperate in the schedule of a prelitigation hearing, required affidavits of merit, etc.

(c) In accordance with Subsection 78B-3-423(6), a certificate of compliance shall not be issued to a person who fails to timely file a required affidavit of merit.

R156-78B-15. Affidavits alleging Failure to Reasonably Cooperate in Scheduling a Hearing.

(1) As required by Subsection 78B-3-416(3)(c)(ii), an affidavit submitted by a petitioner alleging a respondent's failure to reasonably cooperate in scheduling a prelitigation hearing shall be submitted within 180 days of petitioner's request for prelitigation panel review.

(2) The affidavit alleging respondent's failure to reasonably cooperate in scheduling a prelitigation hearing filed under Subsection (1) shall set forth specific factual allegations that:

(a) respondent failed to reasonably cooperate in scheduling a hearing; and

(b) the hearing could not be held within the jurisdictional time frame of 180 days from the date of the request for prelitigation review.

(3) Failure to reasonably cooperate in scheduling a hearing may include one or more of the following reasons:

(a) a respondent failed to agree upon a first and second choice of dates for a prelitigation hearing;

(b) a respondent failed to reasonably participate in determining the type of health care providers requested for the prelitigation hearing panel; or

(c) a respondent submitted a motion for and obtained a continuance of the prelitigation hearing and failed to timely submit a notice of availability for a rescheduled hearing.

(4) An affidavit alleging failure to reasonably cooperate in scheduling a prelitigation hearing shall comply with Section R156-78B-6 governing pleadings and Section R156-78B-7 governing filing and service.

(5) A respondent may file a response to an affidavit alleging failure to reasonably cooperate in scheduling a prelitigation hearing within five days after the service of the affidavit. Any response shall be in the form of a counter affidavit.

(6) The Division shall review petitioner's affidavit alleging failure to reasonably cooperate in scheduling a hearing and respondent's counter affidavit, if any, and make a written determination within 15 days of the filing of petitioner's affidavit, under either Subsections 78B-3-416(3)(d)(ii)(A) or (B). The written determination shall be accompanied by a certificate of compliance or a notice to file an affidavit of merit, as appropriate.

R156-78B-16a. Affidavits of Merit - In General.

(1) The required affidavit of merit under Subsection 78B-3-423(1) shall consist of two or more affidavits, one executed by counsel or by a pro se claimant as required by Subsection 78B-3-423(2)(a) and one or more signed by an appropriate health care provider or providers as required by Subsections 78B-3-423(2)(b) and (3).

(2) The required affidavits shall comply with Section R156-78B-6 governing pleadings and Section R156-78B-7 governing filings and service.

R156-78B-16b. Affidavits of Merit - Affidavit of Counsel.

Each affidavit of merit executed by counsel or by a pro se claimant as required by Subsections 78B-3-423(1) and (2)(a) shall include the following text immediately prior to the affiant's signature:

TABLE V

I hereby certify that the affiant has consulted with and reviewed the facts of the case with an appropriate health care provider (or providers) and that the provider (or providers) has (have) determined after a review of the medical record and other relevant material involved in the particular action that there is a reasonable and meritorious cause for the filing of a medical liability action. The affidavit(s) of merit are attached.

R156-78B-16c. Affidavits of Merit - Affidavit of Health Care Provider or Providers.

(1) Each affidavit of merit signed by a health care provider as required by Subsections 78B-3-423(1) and (2)(b) shall include the following text immediately prior to the affiant's signature:

TABLE VI

I hereby certify that I am an appropriate health care provider qualified to render an affidavit of merit in this medical malpractice case as specified by Subsection 78B-3-423(3).

I further certify that I have reviewed the medical records and other relevant material involved in this medical malpractice case and have determined that in my opinion:

(1) There are reasonable grounds to believe that the applicable standard of care was breached.

(2) The breach was a proximate cause of the injury claimed in the notice of intent to commence action.

(3) The specific reasons for my opinion are as follows (explanation).

(2) As provided by Subsection 78B-3-423(2)(c), the statement that there are reasonable grounds to believe that the applicable standard of care was breached shall be waived if the claimant received an opinion that there was a breach of the applicable standard of care under Subsection 78B-3-418(2)(a)(i).

R156-78B-16d. Affidavits of Merit - Appropriate Health Care Provider Affiant or Affiants.

The appropriate health care provider who is required to issue an affidavit of merit under Subsection 78B-3-423(3) and R156-78B-16c is clarified as follows. The health care provider shall:

(1) if none of the respondents is a physician under Title 58, Chapter 67, Utah Medical Practice Act, or an osteopathic physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, be one or more health care providers who hold an active and in good standing license in Utah or another state in the same specialty or the same class of license as the respondents; or

(2) if at least one of the respondents is a physician under Title 58, Chapter 67, Utah Medical Practice Act, or an osteopathic physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, be exclusively a physician who is licensed and in good standing in Utah or another state to practice medicine in all of its branches.

R156-78B-16e. Affidavits of Merit - Request for 60-day Extension to File.

(1) In accordance with Subsection 78B-3-423(4), a petitioner's request for a 60-day extension to file an affidavit of merit shall be supported by an affidavit signed by the petitioner's or petitioner's attorney that includes the following text immediately prior to the affiant's signature:

TABLE VII

I hereby certify that the claimant is unable to timely submit an affidavit of merit as required by Subsection 78B-3-423(1) because:

(1) a statute of limitations would impair the action; and

(2) the affidavit of merit could not be obtained before the expiration of the statute of limitations for the following reason or reasons (describe).

I further certify that this affidavit has been served on each respondent in accordance with Section R156-78B-7 on the earlier of:

(a) the required time frame specified in Subsection 78B-3-423(1)(b)(i); or

(b) the date this affidavit was filed with the Division.

(2) Any respondent may submit a response to a request for extension to file an affidavit of merit within five days after the service of the affidavit. Any response shall be in the form of a counter affidavit.

(3) The Division shall review a petitioner's affidavit in support of petitioner's request for a 60-day extension to file an affidavit of merit and respondent's counter affidavit, if any, and render a determination within 15 days after the filing of the request.

KEY: medical malpractice, prelitigation, certificate of compliance, affidavit of merit
November 8, 2011 78B-3-416(1)(b)
Notice of Continuation January 10, 2017

R162. Commerce, Real Estate.
R162-2f. Real Estate Licensing and Practices Rules.
R162-2f-101. Title and Authority.

(1) This chapter is known as the "Real Estate Licensing and Practices Rules."

(2) The authority to establish rules for real estate licensing and practices is granted by Section 61-2f-103.

(3) The authority to establish rules governing undivided fractionalized long-term estates is granted by Section 61-2f-307.

(4) The authority to collect fees is granted by Section 61-2f-105.

R162-2f-102. Definitions.

(1) "Active license" means a license granted to an applicant who:

(a) qualifies for licensure under Section 61-2f-203 and these rules;

(b) pays all applicable nonrefundable license fees; and

(c) affiliates with a principal brokerage.

(2) "Advertising" means a commercial message through:

(a) newspaper;

(b) magazine;

(c) Internet;

(d) e-mail;

(e) radio;

(f) television;

(g) direct mail promotions;

(h) business cards;

(i) door hangers;

(j) signs;

(k) other electronic communication; or

(l) any other medium.

(3) "Affiliate":

(a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f et seq. and these rules; and

(b) when used in reference to an undivided fractionalize long-term estate, means an individual or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

(4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.

(5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.

(6) "Brokerage" means a real estate sales or a property management company.

(7) "Brokerage record" means any record related to the business of a principal broker, including:

(a) record of an offer to purchase real estate;

(b) record of a real estate transaction, regardless of whether the transaction closed;

(c) licensing records;

(d) banking and other financial records;

(e) independent contractor agreements;

(f) trust account records, including:

(i) deposit records in the form of a duplicate deposit slip, deposit advice, or equivalent document; and

(ii) conveyance records in the form of a check image, wire transfer verification, or equivalent document; and

(g) records of the brokerage's contractual obligations.

(8) "Business day" is defined in Subsection 61-2f-102(3).

(9) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses approved for prelicensing education or continuing education; or

(b) function as an instructor for courses approved for prelicensing education or continuing education.

(10) "Closing gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in appreciation for having used the services of a real estate brokerage.

(11) "Commission" means the Utah Real Estate Commission.

(12) "Continuing education" means professional education required as a condition of renewal in accordance with Section R162-2f-204 and may be either:

(a) core: topics identified in Subsection R162-2f-206c(5)(c); or

(b) elective: topics identified in Subsection R162-2f-206c(5)(e).

(13) "Correspondence course" means a self-paced real estate course that:

(a) is not distance or traditional education; and

(b) fails to meet real estate educational course certification standards because:

(i) it is primarily student initiated; and

(ii) the interaction between the instructor and student lacks substance and/or is irregular.

(14) "Day" means calendar day unless specified as "business day."

(15)(a) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including the following:

(i) computer conferencing;

(ii) satellite teleconferencing;

(iii) interactive audio;

(iv) interactive computer software;

(v) Internet-based instruction; and

(vi) other interactive online courses.

(b) "Distance education" does not include home study and correspondence courses.

(16) "Division" means the Utah Division of Real Estate.

(17) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.

(18) "Expired license" means a license that is not renewed pursuant to Section 61-2f-204 and Section R162-2f-204 by:

(a) the close of business on the expiration date, if the expiration date falls on a day when the division is open for business; or

(b) the next business day following the expiration date, if the expiration date falls on a day when the division is closed.

(19) "Guaranteed sales plan" means:

(a) a plan in which a seller's real estate is guaranteed to be sold; or

(b) a plan whereby a licensee or anyone affiliated with a licensee agrees to purchase a seller's real estate if it is not purchased by a third party:

(i) in the specified period of a listing; or

(ii) within some other specified period of time.

(20) "Inactive license" means a license that has been issued pursuant to Sections R162-2f-202a through 202c or renewed pursuant to Section R162-2f-204, but that may not be used to conduct the business of real estate because the license holder is not affiliated with a principal broker. Pursuant to Section R162-2f-203, a license may be inactivated:

(a) voluntarily, with the assent of the license holder; or

(b) involuntarily, without the assent of the license holder.

(21) "Inducement gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in a real estate transaction as an incentive to use the services of a real estate brokerage.

(22) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.

(23) "Limited agency" means the representation of all principals in the same transaction to negotiate a mutually acceptable agreement:

(a) subject to the terms of a limited agency agreement; and

(b) with the informed consent of all principals to the transaction.

(24) "Net listing" means a listing agreement under which the real estate commission is the difference between the actual selling price of the property and a minimum selling price as set by the seller.

(25)(a) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to Subsection R162-2f-206c(1)(b).

(b) "Non-certified education" does not include:

(i) home study courses; or

(ii) correspondence courses.

(26) "Nonresident applicant" means a person:

(a) whose primary residence is not in Utah; and

(b) who qualifies under Title 61, Chapter 2f et seq. and these rules for licensure as a principal broker, associate broker, or sales agent.

(27) "Principal brokerage" means the main real estate or property management office of a principal broker.

(28) "Principal" in a transaction means an individual who is represented by a licensee and may be:

(a) the buyer or lessee;

(b) an individual having an ownership interest in the property;

(c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or

(d) an individual who is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor, or lessee.

(29) "Provider" means an individual or business that is approved by the division to offer continuing education.

(30) "Property management" is defined in Subsection 61-2f-102(19).

(31) "Registration" means authorization from the division to engage in the business of real estate as:

(a) a corporation;

(b) a partnership;

(c) a limited liability company;

(d) an association;

(e) a dba;

(f) a professional corporation;

(g) a sole proprietorship; or

(h) another legal entity of a real estate brokerage.

(32) "Reinstatement" is defined in Subsection 61-2f-102(22).

(33) "Reissuance" is defined in Subsection 61-2f-102(23).

(34) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees shall submit licensing information to the division.

(35) "Renewal" is defined in Subsection 61-2f-102(24).

(36) "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.

(37) "School" means:

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college or vocational-technical school;

(c) any local real estate organization that has been approved by the division as a school; or

(d) any proprietary real estate school.

(38) "Sponsor" means:

(a) a person who is the original seller of an undivided fractionalized long-term estate.

(b) sponsor includes, if the seller is an entity, any individual who exercises managerial responsibility in the sponsoring entity.

(39) "Third party service provider" means an individual or entity that provides a service necessary to the closing of a specific transaction and includes:

(a) mortgage brokers;

(b) mortgage lenders;

(c) loan originators;

(d) title service providers;

(e) attorneys;

(f) appraisers;

(g) providers of document preparation services;

(h) providers of credit reports;

(i) property condition inspectors;

(j) settlement agents;

(k) real estate brokers;

(l) marketing agents;

(m) insurance providers; and

(n) providers of any other services for which a principal or investor will be charged.

(40) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

(41) "Undivided fractionalized long-term estate" is defined in Subsection 61-2f-102(26).

R162-2f-105. Fees.

Any fee collected by the division is nonrefundable.

R162-2f-201. Qualification for Licensure.

(1) Character. Pursuant to Subsection 61-2f-203(1)(c), an applicant for licensure as a sales agent, associate broker, or principal broker shall evidence honesty, integrity, truthfulness, and reputation.

(a) An applicant shall be denied a license for:

(i) a felony that resulted in:

(A) a conviction occurring within the five years preceding the date of application;

(B) a plea agreement occurring within the five years preceding the date of application; or

(C) a jail or prison term with a release date falling within the five years preceding the date of application; or

(ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within the three years preceding the date of application; or

(B) a jail or prison term with a release date falling within the three years preceding the date of application.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's honesty, integrity, truthfulness, and reputation. In evaluating an applicant for these qualities, the division and commission may consider:

(i) criminal convictions or plea agreements other than those specified in this Subsection (1)(a);

(ii) past acts related to honesty or truthfulness, with particular consideration given to any such acts involving the business of real estate, that would be grounds under Utah law for sanctioning an existing license;

(iii) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(iv) court findings of fraudulent or deceitful activity;

(v) evidence of non-compliance with court orders or conditions of sentencing; and

(vi) evidence of non-compliance with:

(A) terms of a diversion agreement not yet closed and dismissed;
(B) a probation agreement; or
(C) a plea in abeyance.
(c)(i) An applicant who, as of the date of application, is serving probation or parole for a crime that contains an element of violence or physical coercion shall, in order to submit a complete application, provide for the commission's review current documentation from two licensed therapists, approved by the division, stating that the applicant does not pose an ongoing threat to the public.
(ii) For purposes of applying this rule, crimes that contain an element of violence or physical coercion include, but are not limited to, the following:
(A) assault, including domestic violence;
(B) rape;
(C) sex abuse of a child;
(D) sodomy on a child;
(E) battery;
(F) interruption of a communication device;
(G) vandalism;
(H) robbery;
(I) criminal trespass;
(J) breaking and entering;
(K) kidnapping;
(L) sexual solicitation or enticement;
(M) manslaughter; and
(N) homicide.
(iii) Information and documents submitted in compliance with this Subsection (1)(c) shall be reviewed by the commission, which may exercise discretion in determining whether the applicant qualifies for licensure.
(2) Competency. In evaluating an applicant for competency, the division and commission may consider evidence including:
(a) civil judgments, with particular consideration given to any such judgments involving the business of real estate;
(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
(c) suspension or revocation of a professional license;
(d) sanctions placed on a professional license; and
(e) investigations conducted by regulatory agencies relative to a professional license.
(3) Age. An applicant shall be at least 18 years of age.
(4) Minimum education. An applicant shall have:
(a) a high school diploma;
(b) a GED; or
(c) equivalent education as approved by the commission.

R162-2f-202a. Sales Agent Licensing Fees and Procedures.
(1) To obtain a Utah license to practice as a sales agent, an individual who is not currently and actively licensed in any state shall:
(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
(c)(i) successfully complete 120 hours of approved prelicensing education;
(ii) evidence current membership in the Utah State Bar; or
(iii) apply to the division for waiver of all or part of the education requirement by virtue of:
(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or
(B) completing other equivalent real estate education within the 12-month period prior to the date of application;
(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
(ii) pay a nonrefundable examination fee to the testing center;
(e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;
(f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
(i) documentation indicating successful completion of the required prelicensing education;
(ii) a report of the examination showing a passing score for each component of the examination; and
(iii) the applicant's business, home, and e-mail addresses;
(g) if applying for an active license, affiliate with a principal broker; and
(h) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.
(2) To obtain a Utah license to practice as a sales agent, an individual who is currently and actively licensed in another state shall:
(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
(c)(i) successfully complete 120 hours of approved prelicensing education;
(ii) evidence current membership in the Utah State Bar; or
(iii) apply to the division for waiver of all or part of the education requirement by virtue of:
(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree;
(B) completing other equivalent real estate education within the 12-month period prior to the date of application; or
(C) having been licensed in a state that has substantially equivalent prelicensing education requirements;
(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
(ii) pay a nonrefundable examination fee to the testing center;
(e)(i) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination; or
(ii) if actively licensed during the two years immediately preceding the date of application in a state that has substantially equivalent licensing examination requirements:
(A) take and pass the state component of the licensing examination; and
(B) apply to the division for a waiver of the national component of the licensing examination;
(f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
(i) documentation indicating successful completion of the required prelicensing education;
(ii) a report of the examination showing a passing score for each component of the examination; and
(iii) the applicant's business, home, and e-mail addresses;
(g) provide from any state where licensed:
(i) a written record of the applicant's license history; and
(ii) complete documentation of any disciplinary action taken against the applicant's license;
(h) if applying for an active license, affiliate with a principal broker; and
(i) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.
(3) Deadlines.
(a) If an individual passes one test component but fails the

other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(b) An application for licensure shall be submitted:

(i) within 90 days of the date on which the individual achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this Section R162-2f-202a falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-202b. Principal Broker Licensing Fees and Procedures.

(1) To obtain a Utah license to practice as a principal broker, an individual shall:

(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

(c)(i) successfully complete 120 hours of approved prelicensing education, including:

(A) 45 hours of broker principles;

(B) 45 hours of broker practices; and

(C) 30 hours of Utah law and testing; or

(ii) apply to the division for waiver of all or part of the education requirement by virtue of:

(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or

(B) completing other equivalent real estate education within the 12-month period prior to the date of application;

(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and

(ii) pay a nonrefundable examination fee to the testing center;

(e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;

(f)(i) unless Subsection (2)(a) applies, evidence the individual's having, within the five-year period preceding the date of application either:

(A) three years full-time, licensed, active real estate experience; or

(B) two years full-time, licensed, active, real estate experience and one year full-time professional real estate experience from the optional experience table in Appendix 3; and

(ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 documented experience points complying with R162-2f-401a, as follows:

(A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2, of which a maximum of 25 points may have been accumulated from the "All other property management" subsections of Appendix 2; and

(B) 0 to 15 points pursuant to the experience point table found in Appendix 3; and

(iii) a minimum of one-half of the experience points from Tables 1 and 2 must derive from transactions of properties located in the state of Utah;

(iv) if an individual submits evidence of experience points for transactions involving a team or group, experience points are limited to those transactions for which the individual is named in any written agency agreements and purchase and/or lease contracts and the applicable experience points will be divided proportionally among the licensees identified in the agency agreements and and/or lease contracts;

(g) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:

(i) documentation indicating successful completion of the approved broker prelicensing education;

(ii) a report of the examination showing a passing score for each component of the examination; and

(iii) the applicant's business, home, and e-mail addresses;

(h) provide from any state where licensed as a real estate agent or broker:

(i) a written record of the applicant's license history; and

(ii) complete documentation of any disciplinary action taken against the applicant's license;

(i) if applying for an active license, affiliate with a registered company;

(j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund; and

(k) establish real estate and property management trust accounts, as applicable pursuant to Section R162-2f-403, that:

(i) contain the term "real estate trust account" or "property management trust account", as applicable, in the account name; and

(ii) are separate from any operating account(s) of the registered entity for which the individual will serve as a broker; and

(l) identify the location(s) where brokerage records will be kept.

(2)(a) If an individual applies under this Subsection R162-2f-202b within two years of allowing a principal broker license to expire, the experience required under Subsection (1)(f) shall be accumulated within the seven-year period preceding the date of application.

(b) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under this Subsection (1)(f) may bring the application before the commission.

(3) Deadlines.

(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(b) An application for licensure shall be submitted:

(i) within 90 days of the date on which the individual achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this Section R162-2f-202b falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(4) Restriction. A principal broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.

(5) Dual broker licenses.

(a)(i) A person who holds or obtains a dual broker license under this Subsection may function as the principal broker of a property management company that is a separate entity from the person's real estate brokerage.

(ii) A dual broker may not conduct real estate sales activities from the separate property management company.

(iii) A principal broker may conduct property management activities from the person's real estate brokerage:

(A) without holding a dual broker license; and

(B) in accordance with Subsections R162-2f-401j and R162-2f-403a-403c;

(b) A dual broker who wishes to consolidate real estate and property management operations into a single brokerage

may:

(i) at the broker's request, convert the dual broker license to a principal broker license; and

(ii)(A) convert the property management company to a branch office of the real estate brokerage, including the assignment of a branch broker and using the same name as the real estate brokerage; or

(B) close the separate property management company.

(c) As of May 8, 2013:

(i) the Division shall:

(A) cease issuing property management principal broker (PMPB) licenses;

(B) cease issuing property management company (MN) registrations except as to a second company registered under a dual broker license;

(C) convert any property management principal broker (PMPB) license to a real estate principal broker (PB) license; and

(D) as to any property management company (MN) registration that is not a second company under a dual broker license, convert the registration to a real estate brokerage (CN) registration; and

(ii) it shall be permissible to conduct real estate sales activities under any company registration that is converted pursuant to this Subsection (5)(c)(i)(C).

R162-2f-202c. Associate Broker Licensing Fees and Procedures.

To obtain a Utah license to practice as an associate broker, an individual shall:

(1) comply with Subsections R162-2f-202b(1)(a) through (j); and

(2) if applying for an active license, affiliate with a principal broker.

R162-2f-203. Inactivation and Activation.

(1) Inactivation.

(a) To voluntarily inactivate the license of a sales agent or an associate broker, the holder of the license shall complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(b) To voluntarily inactivate a principal broker license, the principal broker shall:

(i) prior to inactivating the license:

(A) give written notice to each licensee affiliated with the principal broker of the date on which the principal broker proposes to inactivate the license; and

(B) provide to the division evidence that the licensee has complied with this Subsection (1)(b)(i)(A); and

(ii) complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(c) The license of a sales agent or associate broker is involuntarily inactivated upon:

(i) termination of the licensee's affiliation with a principal broker;

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the sales agent or associate broker is affiliated; or

(iii) inactivation or termination of the registration of the entity with which the licensee's principal broker is affiliated.

(d) The registration of an entity is involuntarily inactivated upon:

(i) termination of the entity's affiliation with a principal broker; or

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the entity is affiliated.

(e) The license of a principal broker is involuntarily inactivated upon termination of the licensee's affiliation with a registered entity.

(f) If the division or commission orders that a principal broker's license is to be suspended or revoked:

(i) the order shall state the effective date of the suspension or revocation; and

(ii) prior to the effective date, the entity shall:

(A)(I) affiliate with a new principal broker; and

(II) submit change forms through RELMS to affiliate each licensee with the new principal broker; or

(B)(I) provide written notice to each licensee affiliated with the principal broker of the pending suspension or revocation; and

(II) comply with Subsection R162-2f-207(3)(c)(ii)(B).

(2) Activation.

(a) To activate a license, the holder of the inactive license shall:

(i) complete and submit a change card through RELMS pursuant to Section R162-2f-207;

(ii) submit proof of:

(A) having been issued an active license at the time of last renewal;

(B) having completed, within the one-year period preceding the date on which the licensee requests activation, 18 hours of continuing education, including nine hours of core topics; or

(C) having passed the licensing examination within the six-month period prior to the date on which the licensee requests activation;

(iii)(A) if applying to activate a sales agent or associate broker license, evidence affiliation with a principal broker; or

(B) if applying to activate a principal broker license, evidence affiliation with a registered entity; and

(iv) pay a non-refundable activation fee.

(b) A licensee who submits continuing education to activate a license may not use the same continuing education to renew the license at the time of the licensee's next renewal.

R162-2f-204. License Renewal.

(1) Renewal period and deadlines.

(a) A license issued under these rules is valid for a period of two years from the date of licensure.

(b) By the 15th day of the month of expiration, an applicant for renewal shall submit to the division proof of having completed all continuing education required under this Subsection (2)(b).

(c) In order to renew on time without incurring a late fee:

(i) an individual who is required to submit a renewal application through the online RELMS system shall complete the online process, including the completion and banking of continuing education credits, by the license expiration date; and

(ii) an individual whose circumstances require a "yes" answer to a disclosure question on the renewal application shall submit a paper renewal:

(A) by the license expiration date, if that date falls on a day when the division is open for business; or

(B) on the next business day following the license expiration date, if that date falls on a day when the division is closed for business.

(2) Qualification for renewal.

(a) Character and competency.

(i) An individual applying for a renewed license shall evidence that the individual maintains character and competency as required for initial licensure.

(ii) An individual applying for a renewed license may not have:

(A) a felony conviction since the last date of licensure; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant, related to activities requiring a real estate license, by a court of competent jurisdiction or a government

agency since the last date of licensure, unless the finding was explicitly considered by the division in a previous application.

(b) Continuing education.

(i) To renew at the end of the first renewal cycle, an individual shall complete:

(A) the 12-hour new sales agent course certified by the division; and

(B) an additional six non-duplicative hours of continuing education:

(I) certified by the division as either core or elective; or

(II) acceptable to the division pursuant to this Subsection (2)(b)(ii)(B).

(ii) To renew at the end of a renewal cycle subsequent to the first renewal, an individual shall:

(A) complete 18 non-duplicative hours of continuing education:

(I) certified by the division;

(II) including at least nine non-duplicative hours of core curriculum; and

(III) taken during the previous license period; or

(B) apply to the division for a waiver of all or part of the required continuing education hours by virtue of having completed non-certified courses that:

(I) were not required under Subsection R162-2f-206c(1)(a) to be certified; and

(II) meet the continuing education objectives listed in Subsection R162-2f-206c(2)(f).

(iii)(A) Completed continuing education courses will be credited to an individual when the hours are uploaded by the course provider pursuant to Subsection R162-2f-401d(1)(k).

(B) If a provider fails to upload course completion information within the ten-day period specified in Subsection R162-2f-401d(1)(k), an individual who attended the course may obtain credit by:

(I) filing a complaint against the provider; and

(II) submitting the course completion certificate to the division.

(c) Principal broker. In addition to meeting the requirements of this Subsection (2)(a) and (b), an individual applying to renew a principal broker license shall certify that:

(i) the business name under which the individual operates is current and in good standing with the Division of Corporations and Commercial Code; and

(ii) the trust account maintained by the principal broker is current and in compliance with Section R162-2f-403.

(3) Renewal and reinstatement procedures.

(a) To renew a license, an applicant shall, prior to the expiration of the license:

(i) submit the forms required by the division, including proof of having completed continuing education pursuant to this Subsection (2)(b); and

(ii) pay a nonrefundable renewal fee.

(b) To reinstate an expired license, an applicant shall, according to deadlines set forth in Subsections 61-2f-204(2)(b) - (d):

(i) submit all forms required by the division, including proof of having completed continuing education pursuant to Subsection 61-2f-204(2); and

(ii) pay a nonrefundable reinstatement fee.

(4) Transition to online renewal. An individual licensee shall submit an application for renewal through the online RELMS system unless the individual's circumstances require a "yes" answer in response to a disclosure question.

R162-2f-205. Registration of Entity.

(1) A principal broker may not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division.

(2) Exemptions. The following locations may be used to conduct real estate business without being registered as branch offices:

(a) a model home;

(b) a project sales office; and

(c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

(3) To register an entity with the division, a principal broker shall:

(a) evidence that the name of the entity is registered with the Division of Corporations;

(b) certify that the entity is affiliated with a principal broker who:

(i) is authorized to use the entity name; and

(ii) will actively supervise the activities of all sales agents, associate brokers, branch brokers, and unlicensed staff;

(c) if registering a branch office, identify the branch broker who will actively supervise all licensees and unlicensed staff working from the branch office;

(d) submit an application that includes:

(i) the physical address of the entity;

(ii) if the entity is a branch office, the name and license number of the branch broker;

(iii) the names of associate brokers and sales agents assigned to the entity; and

(iv) the location and account number of any real estate and property management trust account(s) in which funds received at the registered location will be deposited;

(e) inform the division of:

(i) the location and account number of any operating account(s) used by the registered entity; and

(ii) the location where brokerage records will be kept; and

(f) pay a nonrefundable application fee.

(4) Restrictions.

(a)(i) The division shall not register an entity proposing to use a business name that:

(A) is likely to mislead the public into thinking that the entity is not a real estate brokerage or property management company;

(B) closely resembles the name of another registered entity; or

(C) the division determines might otherwise be confusing or misleading to the public.

(ii) Approval by the division of an entity's business name does not ensure or grant to the entity a legal right to use or operate under that name.

(b) A branch office shall operate under the same business name as the principal brokerage.

(c) An entity may not designate a post office box as its business address, but may designate a post office box as a mailing address.

(d) All trust accounts and operating accounts used by a registered entity shall be maintained in a bank or credit union located in the state of Utah.

(5) Registration not transferable.

(a) A registered entity shall not transfer the registration to any other person.

(b) A registered entity shall not allow an unlicensed person to use the entity's registration to perform work for which licensure is required.

(c) If a change in corporate structure of a registered entity creates a separate and unique legal entity, that entity shall obtain a unique registration, and shall not operate under an existing registration.

(d) The dissolution of a corporation, partnership, limited liability company, association, or other entity registered with the division terminates the registration.

R162-2f-206a. Certification of Real Estate School.

(1) Prior to offering real estate prelicensing or continuing education, a school shall:

(a) first, obtain division approval of the school name; and

(b) second, certify the school with the division pursuant to this Subsection (2).

(2) To certify, a school applicant shall, at least 90 days prior to teaching any course, prepare and supply the following information to the division:

(a) contact information, including:

(i) name, phone number, email address, and address of the physical facility;

(ii) name, phone number, email address, and address of each school director;

(iii) name, phone number, email address, and address of each school owner; and

(iv) an e-mail address where correspondence will be received by the school;

(b) evidence that the school directors and owners meet the character requirements outlined in Subsection R162-2f-201(1) and the competency requirements outlined in Subsection R162-2f-201(2);

(c) evidence that the school name, as approved by the division pursuant to this Subsection (1)(a), is registered with the Division of Corporations and Commercial Code as a real estate education provider;

(d) school description, including:

(i) type of school; and

(ii) description of the school's physical facilities;

(e) list of courses to be offered, including the following:

(i) a statement of whether each course is a prelicensing or continuing education course; and

(ii) as to a continuing education course, whether it is designed to qualify as fulfilling all or part of the core curriculum requirement for new agents;

(f) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(g) proof that each instructor is:

(i) certified by the division;

(ii) qualified as a guest lecturer by having:

(A) requisite expertise in the field; and

(B) approval from the division; or

(iii) exempt from certification under Subsection R162-2f-206d(4);

(h) schedule of courses offered, including the days, times, and locations of classes;

(i) statement of attendance requirements as provided to students;

(j) refund policy as provided to students;

(k) disclaimer as provided to students and as specified in Subsection (3)(c);

(l) criminal history disclosure statement as provided to students and as specified in Subsection (3)(d);

(m) disclosure, as specified in Subsection (3)(e), of any possibility of obtaining an education waiver;

(n) course completion policy, as provided to students, describing the length of time allowed for completion and detailed requirements; and

(o) any other information the division requires.

(3) Minimum standards.

(a) The course schedule may not provide or allow for more than eight credit hours per student per day.

(b) The attendance statement shall require that each student attend at least 90% of the scheduled class periods, excluding breaks.

(c) The disclaimer shall adhere to the following requirements:

(i) be typed in all capital letters at least 1/4 inch high; and

(ii) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for licensees at this school."

(d) The criminal history disclosure statement shall:

(i) be provided to each student prior to the school accepting payment; and

(ii) clearly inform the student that upon application with the division, the student will be required to:

(A) accurately disclose the student's criminal history according to the licensing questionnaire provided by the division;

(B) submit fingerprint cards to the division and consent to a criminal background check; and

(C) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(iii) clearly inform the student that the division will consider the applicant's criminal history pursuant to Subsection 61-2f-204(1)(e) and Subsection R162-2f-201(1) in making a decision on the application; and

(iv) include a section for the student's attestation that the student has read and understood the disclosure.

(e) The education waiver disclosure shall adhere to the following requirements:

(i) disclose to students the requirements for obtaining an education waiver while they are still eligible for a full refund;

(ii) be typed in all capital letters at least 1/4 inch high;

(iii) inform the students that the division grants education waivers for qualified individuals; and

(iv) state the following language: "A student accepted or enrolled for education hours cannot later reduce those hours by applying for an education waiver. An education waiver must be obtained before a student enrolls and is accepted by a school for education hours."

(f) Within 15 days after the occurrence of any material change in the information outlined in this Subsection (2)(a), the school shall provide, to the division's education staff, written notice of the change.

(4)(a) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a school certification, an applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(c) To reinstate an expired school certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired school certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (4) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206b. Certification Prelicensing Course.

(1) To certify a prelicensing course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) comprehensive course outline including:

(i) description of the course, including a statement of whether the course is designed for:

(A) sales agents; or

(B) brokers;
(ii) number of class periods spent on each subject area;
(iii) minimum of three to five learning objectives for every three hours of class time; and
(iv) reference to the course outline approved by the commission for each topic;
(b) number of quizzes and examinations;
(c) grading system, including methods of testing and standards of grading;
(d)(i) a copy of at least two final examinations to be used in the course;
(ii) the answer key(s) used to determine if a student has passed the exam; and
(iii) an explanation of procedure if the student fails the final examination and thereby fails the course; and
(e) a list of the titles, authors and publishers of all required textbooks.
(2) To certify a prelicensing course for distance education, a person shall, no later than 60 days prior to the date on which the course is proposed to begin, provide the following to the division:
(a) all items listed in this Subsection (1);
(b) description of each method of course delivery;
(c) description of any media to be used;
(d) course access for the division using the same delivery methods and media that will be provided to the students;
(e) description of specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;
(f) description of how the students' achievement of the stated learning objectives will be measured at regular intervals;
(g) description of how and when certified prelicensing instructors will be available to answer student questions;
(h) attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims; and
(i) a description of the complaint process to resolve student grievances.
(3) Minimum standards. A prelicensing course shall:
(a) address each topic required by the course outline as approved by the commission;
(b) meet the minimum hourly requirement as established by Subsection 61-2f-203(1)(d)(i) and these rules;
(c) limit the credit that students may earn to no more than eight credit hours per day;
(d) be taught in an appropriate classroom facility unless approved for distance education;
(e) allow a maximum of 10% of the required class time for testing, including:
(i) practice tests; and
(ii) a final examination;
(f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline; and
(g) reflect the current statutes and rules of the division.
(4) A prelicensing course certification expires at the same time as the school certification and is renewed automatically when the school certification is renewed.

R162-2f-206c. Certification of Continuing Education Course.

(1)(a) The division may not award continuing education credit for a course that is advertised in Utah to real estate licensees unless the course is certified prior to its being taught.
(b) A licensee who completes a course that is not required to be certified pursuant to this Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to this Subsection (2)(f), may apply to the division for an award of continuing education credit after successfully completing the course.
(2) To certify a continuing education course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:
(a) name and contact information of the course provider;
(b) name and contact information of the entity through which the course will be provided;
(c) description of the physical facility where the course will be taught;
(d) course title;
(e) number of credit hours;
(f) statement defining how the course will meet the objectives of continuing education by increasing the participant's:
(i) knowledge;
(ii) professionalism; and
(iii) ability to protect and serve the public;
(g) course outline including a description of the subject matter covered in each 15-minute segment;
(h) a minimum of three learning objectives for every three hours of class time;
(i) name and certification number of each certified instructor who will teach the course;
(j) copies of all materials to be distributed to participants;
(k) signed statement in which the course provider and instructor(s):
(i) agree not to market personal sales products;
(ii) allow the division or its representative to audit the course on an unannounced basis; and
(iii) agree to upload, within ten business days after the end of a course offering, to the database specified by the division, the following:
(A) course name;
(B) course certificate number assigned by the division;
(C) date(s) the course was taught;
(D) number of credit hours; and
(E) names and license numbers of all students receiving continuing education credit;
(l) procedure for pre-registration;
(m) tuition or registration fee;
(n) cancellation and refund policy;
(o) procedure for taking and maintaining control of attendance during class time;
(p) sample of the completion certificate;
(q) nonrefundable fee for certification as required by the division; and
(r) any other information the division requires.
(3) To certify a continuing education course for distance education, a person shall:
(a) comply with this Subsection (2);
(b) submit to the division a complete description of all course delivery methods and all media to be used;
(c) provide course access for the division using the same delivery methods and media that will be provided to the students;
(d) describe specific frequent and periodic interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives and encourage student participation;
(e) describe how and when certified instructors will be available to answer student questions; and
(f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.
(4) Minimum standards.
(a) Except for distance education courses, all courses shall

be taught in an appropriate classroom facility and not in a private residence.

(b) The minimum length of a course shall be one credit hour.

(c) Except for online courses, the procedure for taking attendance shall be more extensive than having the student sign a class roll.

(d) The completion certificate shall allow for entry of the following information:

(i) licensee's name;

(ii) type of license;

(iii) license number;

(iv) date of course;

(v) name of the course provider;

(vi) course title;

(vii) number of credit hours awarded;

(viii) course certification number;

(ix) course certification expiration date;

(x) signature of the course sponsor; and

(xi) signature of the licensee.

(5) Certification procedures.

(a) Upon receipt of a complete application for certification of a continuing education course, the division shall, at its own discretion, determine whether a course qualifies for certification.

(b) Upon determining that a course qualifies for certification, the division shall determine whether the content satisfies core or elective requirements.

(c) Core topics include the following:

(i) state approved forms and contracts;

(ii) other industry used forms or contracts;

(iii) ethics;

(iv) agency;

(v) short sales or sales of bank-owned property;

(vi) environmental hazards;

(vii) property management;

(viii) prevention of real estate and mortgage fraud;

(ix) federal and state real estate laws;

(x) fair housing;

(xi) division administrative rules;

(xii) broker trust accounts; and

(xiii) water law, rights and transfer.

(d) If a course regarding an industry used form or contract is approved by the division as a core course, the provider of the course shall:

(i) obtain authorization to use the form(s) or contract(s) taught in the course;

(ii) obtain permission for licensees to subsequently use the form(s) or contract(s) taught in the course; and

(iii) if applicable, arrange for the owner of each form or contract to make it available to licensees for a reasonable fee.

(e) Elective topics include the following:

(i) real estate financing, including mortgages and other financing techniques;

(ii) real estate investments;

(iii) real estate market measures and evaluation;

(iv) real estate appraising;

(v) market analysis;

(vi) measurement of homes or buildings;

(vii) accounting and taxation as applied to real property;

(viii) estate building and portfolio management for clients;

(ix) settlement statements;

(x) real estate mathematics;

(xi) real estate law;

(xii) contract law;

(xiii) agency and subagency;

(xiv) real estate securities and syndications;

(xv) regulation and management of timeshares, condominiums, and cooperatives;

(xvi) resort and recreational properties;

(xvii) farm and ranch properties;

(xviii) real property exchanging;

(xix) legislative issues that influence real estate practice;

(xx) real estate license law;

(xxi) division administrative rules;

(xxii) land development;

(xxiii) land use;

(xxiv) planning and zoning;

(xxv) construction;

(xxvi) energy conservation in buildings;

(xxvii) water rights;

(xxviii) landlord/tenant relationships;

(xxix) property disclosure forms;

(xxx) Americans with Disabilities Act;

(xxxi) affirmative marketing;

(xxxii) commercial real estate;

(xxxiii) tenancy in common;

(xxxiv) professional development;

(xxxv) business success;

(xxxvi) customer relation skills;

(xxxvii) sales promotion, including:

(A) salesmanship;

(B) negotiation;

(C) sales psychology;

(D) marketing techniques related to real estate knowledge;

(E) servicing clients; and

(F) communication skills;

(xxxviii) personal and property protection for licensees and their clients;

(xxxix) any topic that focuses on real estate concepts, principles, or industry practices or procedures, if the topic enhances licensee professional skills and thereby advances public protection and safety;

(xl) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education; and

(xli) technology courses that utilize the majority of the time instructing students how the technology:

(A) directly benefits the consumer; or

(B) enables the licensee to be more proficient in performing the licensee's agency responsibilities.

(f) Unacceptable topics include the following:

(i) offerings in mechanical office and business skills, including:

(A) typing;

(B) speed reading;

(C) memory improvement;

(D) language report writing;

(E) advertising; and

(F) technology courses with a principal focus on technology operation, software design, or software use;

(ii) physical well-being, including:

(A) personal motivation;

(B) stress management; and

(C) dress-for-success;

(iii) meetings held in conjunction with the general business of the licensee and the licensee's broker, employer, or trade organization, including:

(A) sales meetings;

(B) in-house staff meetings or training meetings; and

(C) member orientations for professional organizations;

(iv) courses in wealth creation or retirement planning for licensees; and

(v) courses that are specifically designed for exam preparation.

(g) If an application for certification of a continuing education course is denied by the division, the person making application may appeal to the commission.

(6)(a) A continuing education course certification expires

24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a continuing education course certification, an applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(c) To reinstate an expired continuing education course certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired continuing education course certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (6) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206d. Certification of Prelicensing Course Instructor.

(1) An instructor shall certify with the division prior to teaching a prelicensing course.

(2) To certify, an applicant shall provide, within the 30-day period prior to the date on which the applicant proposes to begin instruction:

(a) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);

(b) evidence of having graduated from high school or achieved an equivalent education;

(c) evidence that the applicant understands the real estate industry through:

(i) a minimum of five years of full-time experience as a real estate licensee;

(ii) post-graduate education related to the course subject; or

(iii) demonstrated expertise on the subject proposed to be taught;

(d) evidence of ability to teach through:

(i) a minimum of 12 months of full-time teaching experience;

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or

(iii) attendance at a division instructor development workshop totaling at least two days in length;

(e) evidence of having passed an examination:

(i) designed to test the knowledge of the subject matter proposed to be taught;

(ii) with a score of 80% or more correct responses, and;

(iii) within the six-month period preceding the date of application;

(f) name and certification number of the certified prelicensing school for which the applicant will work;

(g) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(h) a signed statement agreeing not to market personal sales products;

(i) any other information the division requires;

(j) an application fee; and

(k) course-specific requirements as follows:

(i) sales agent prelicensing course: evidence of being a licensed sales agent or broker; and

(ii) broker prelicensing course: evidence of being a licensed associate broker, branch broker, or principal broker.

(3) An applicant may certify to teach a subcourse of the broker prelicensing course by meeting the following requirements:

(a) Brokerage Management. An applicant shall:

(i) hold a current real estate broker license;

(ii) possess at least two years practical experience as an active real estate principal broker; and

(iii)(A) have experience managing a real estate office; or

(B) hold a certified residential broker or equivalent professional designation in real estate brokerage management.

(b) Advanced Real Estate Law. An applicant shall:

(i) hold a current real estate broker license;

(ii) evidence current membership in the Utah State Bar; or

(iii)(A) have graduated from an American Bar Association accredited law school; and

(B) have at least two years real estate law experience.

(c) Advanced Appraisal. An applicant shall hold:

(i) a current real estate broker license, or

(ii) a current appraiser license or certification from the division.

(d) Advanced Finance. An applicant shall:

(i) evidence at least two years practical experience in real estate finance; and

(ii)(A) hold a current real estate broker license;

(B) evidence having been associated with a lending institution as a loan officer; or

(C) hold a degree in finance.

(e) Advanced Property Management. An applicant shall hold a current real estate license and:

(i) evidence at least two years full-time experience as a property manager; or

(ii) hold a certified property manager or equivalent professional designation.

(4) A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the division academic training or experience qualifying the faculty member to teach the course.

(5)(a) A prelicensing instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a prelicensing course instructor certification, an individual shall:

(i) submit all forms required by the division;

(ii) evidence having taught, within the two-year period prior to the date of application, a certified real estate course;

(iii) evidence having attended, within the two-year period prior to the date of application, an instructor development workshop sponsored by the division; and

(iv) pay a nonrefundable renewal fee.

(c) To reinstate an expired prelicensing course instructor certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired prelicensing course instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (5) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206e. Certification of Continuing Education Course

Instructor.

(1) An instructor shall certify with the division before teaching a continuing education course.

(2) To certify, an applicant shall, within the 30-day period prior to the date on which the applicant proposes to begin instruction, provide the following:

(a) name and contact information of the applicant;

(b) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);

(c) evidence of having graduated from high school or achieved an equivalent education;

(d) evidence that the applicant understands the subject matter to be taught through:

(i) a minimum of two years of full-time experience as a real estate licensee;

(ii) college-level education related to the course subject; or

(iii) demonstrated expertise on the subject proposed to be taught;

(e) evidence of ability to teach through:

(i) a minimum of 12 months of full-time teaching experience; or

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience;

(f) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(g) a signed statement agreeing not to market personal sales products;

(h) any other information the division requires; and

(i) a nonrefundable application fee.

(3)(a) A continuing education course instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a continuing education course instructor certification, a person shall:

(i) submit all forms required by the division;

(ii)(A) evidence having taught, within the previous renewal period, a minimum of 12 continuing education credit hours; or

(B) submit written explanation outlining:

(I) the reason for not having taught a minimum of 12 continuing education credit hours; and

(II) documentation to the division that the applicant maintains satisfactory expertise in the subject area proposed to be taught; and

(iii) pay a nonrefundable renewal fee.

(c) To reinstate an expired continuing education instructor certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired continuing education instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (3) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-207. Reporting a Change of Information.

(1) Individual notification requirements.

(a) An individual licensed as a sales agent, associate broker, or principal broker shall report the following to the division:

(i) change in licensee's name; and

(ii) change in licensee's business, home, e-mail, or mailing address.

(b) In addition to complying with this Subsection (1)(a):

(i) an individual licensed as a sales agent or associate broker shall report to the division a change in affiliation with a principal broker; and

(ii) an individual licensed as a principal broker shall report to the division:

(A) termination of a sales agent, associate broker, or branch broker, if the change is not reported pursuant to this Subsection (1)(b)(i);

(B) change in assignment of branch broker; and

(C) termination of the principal broker's affiliation with an entity.

(2) Entity notification requirements. A registered entity shall report the following to the division:

(a) change in entity's name;

(b) change in entity's affiliation with a principal broker;

(c) change in corporate structure;

(d) dissolution of corporation; and

(e) change of location where brokerage records are kept.

(3) Notification procedures.

(a) Name. To report a change in name, a person shall submit to the division a paper change form and:

(i) if the person is an individual, attach to it official documentation such as a:

(A) marriage certificate;

(B) divorce decree;

(C) court order; or

(D) driver license; and

(ii) if the person is an entity:

(A) obtain prior approval from the division of the new entity name; and

(B) attach to the change form proof that the new name as approved by the division pursuant to this Subsection (3)(a)(ii)(A) is registered with, and approved by, the Division of Corporations.

(b) Address. To report a change in address, a person shall enter the change into RELMS.

(c) Affiliation.

(i) To terminate an affiliation between an individual and a principal broker, a person shall submit a change form through RELMS to inactivate or transfer the individual's license; and

(A)(I) obtain the electronic affirmation of the other party to the terminated affiliation; or

(II) comply with this Subsection (4); and

(B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.

(ii) To terminate an affiliation between a principal broker and an entity:

(A) the principal broker shall submit a paper change form to the division to inactivate or transfer the principal broker's license; and

(B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:

(I) cease operations;

(II) submit to the division a paper company/branch change form to inactivate the entity registration;

(III) submit change forms through RELMS to inactivate the license of any licensee affiliated with the entity;

(IV) advise the division as to the location where records will be stored;

(V) notify each listing and management client that the entity is no longer in business and that the client may enter into a new listing or management agreement with a different

brokerage;

(VI) notify each party and cooperating broker to any existing contracts; and

(VII) retain money held in trust under the control of a signer on the trust account, or an administrator or executor, until all parties to each transaction agree in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition.

(iii) Branch broker. To change an assignment of branch broker, a principal broker shall submit a paper change form to the division.

(d) Corporate structure.

(i) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:

(A) if the change does not involve a new business license, or a new registration with the Utah Division of Corporations and Commercial Code, submit a letter to the division, fully explaining the change; and

(B) if the change involves a new business license or a new registration with the Utah Division of Corporations and Commercial Code for a purpose other than a company name change, obtain a new registration.

(ii) To report the dissolution of an entity registered with the division, a person shall comply with this Subsection (3)(c)(ii)(B).

(e) Brokerage records. To report a change in the location where brokerage records are kept, the principal broker of the registered entity shall submit to the division a letter on brokerage letterhead.

(4) Unavailability of individual. If an individual is unavailable to sign or electronically affirm a change form, the person responsible to report the change may do so by:

(a) sending a letter by certified mail to the last known address of the individual to notify that individual of the change; and

(b) as applicable:

(i) entering the certified mail reference number into the appropriate field on the electronic change form; or

(ii) providing to the division a copy of the certified mail receipt.

(5) Fees. The division may require a notification submitted pursuant to this subsection to be accompanied by a nonrefundable change fee.

(6) Deadlines.

(a) A change in affiliation shall be reported to the division before the change is made.

(b) A change in branch manager shall be reported to the division at the time the change is made.

(c) Any other change shall be reported to the division within ten business days of the change taking effect.

(d) As to a change that requires submission of a paper form or document, if the deadline specified in this Section R162-2f-207 falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(7) Effective date. A change reported in compliance with this Section R162-2f-207 becomes effective with the division the day on which the properly executed change form is received by the division.

R162-2f-307. Undivided Fractionalized Long-Term Estate.

A person who sells or offers to sell an undivided fractionalized long-term estate shall disclose to each prospective purchaser certain information related to the real property in which the undivided fractionalized long-term estate is offered, as described in this rule. A real estate licensee who markets an undivided fractionalized long-term estate shall obtain from the sponsor or seller and provide to each prospective purchaser the required information related to the real property in which the undivided fractionalized long-term estate is offered. The information required to be disclosed hereunder shall be in written or documented form, which shall be provided to the purchaser prior to purchasing, and shall include the following:

(1) for all undivided fractionalized long-term estates:

(a) a brief account describing the professional qualifications, background, and experience of the sponsor;

(b) any material information that relates to a current lease or sublease that affects the real property in which the undivided fractionalized long-term estate is offered;

(c) the tenant in common agreement or other agreement that forms the substance of the undivided fractionalized long-term estate and includes a definition of the undivided fractionalized interest;

(d) description of any improvements to the real property in which the undivided fractionalized long-term estate is offered;

(e) any defects in the property known by the sponsor that may materially affect the value of the property;

(f) material information known by the sponsor concerning any environmental issues affecting the real property; and,

(g) a preliminary title report on the real property;

(2) in addition to the disclosures required by subsection (1), if the undivided fractionalized long-term estate includes:

(a) management of the real property by the sponsor or an affiliate of the sponsor in accordance with UCA Section 61-1-13(1)(ee)(ii)(C)(II) and (III), the information required to be disclosed shall include:

(i) the sponsor's continuing interest, if any, in the real property;

(ii) any bankruptcies or civil lawsuits involving the sponsor and each affiliate of the sponsor;

(iii) whether any affiliate of the sponsor is or is expected to become a third-party service provider to the real property;

(iv) any relationship between the property managers and the sponsor; and,

(v) any property management agreements that would continue after the sale;

(b) multiple tenants, the information required to be disclosed shall include:

(i) any rent rolls and payment history for the property which the sponsor has in their possession, custody, or control; and

(ii) any tenant financial records the sponsor has in their possession, custody, or control;

(c) debt on the real property, the information required to be disclosed shall include:

(i) each of the loan documents; and

(ii) a current loan statement;

(d) a master lease agreement, the information required to be disclosed shall include:

(i) the master lease agreement;

(ii) disclosure of the sponsor's relationship with the master tenant, if any;

(iii) if the master lease tenant is an affiliate of the sponsor, or the sponsor participated in establishing the master lease:

(A) audited financial statements of the master lease tenant; and

(B) all bankruptcies or civil lawsuits involving the sponsor, an affiliate of the sponsor, or the master lease tenant.

R162-2f-401a. Affirmative Duties Required of All Licensed Individuals.

An individual licensee shall:

(1) uphold the following fiduciary duties in the course of representing a principal:

(a) loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;

(b) obedience, which obligates the agent to obey all lawful instructions from the principal;

(c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:

(i) the other party; or

(ii) the transaction;

(d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:

(i) a defect in the property; or

(ii) the client's ability to perform on the contract;

(e) reasonable care and diligence;

(f) holding safe and accounting for all money or property entrusted to the agent; and

(g) any additional duties created by the agency agreement;

(2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:

(a) seller(s) the individual represents;

(b) buyer(s) the individual represents;

(c) buyer(s) and seller(s) the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);

(d) the owner of a property for which the individual will provide property management services; and

(e) a tenant whom the individual represents;

(3) in order to represent both principals in a transaction as a limited agent, obtain informed consent by:

(a) clearly explaining in writing to both parties:

(i) that each is entitled to be represented by a separate agent;

(ii) the type(s) of information that will be held confidential;

(iii) the type(s) of information that will be disclosed; and

(iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;

(b) obtaining a written acknowledgment from each party affirming that the party waives the right to:

(i) undivided loyalty;

(ii) absolute confidentiality; and

(iii) full disclosure from the licensee; and

(c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;

(4) when acting under a limited agency agreement:

(a) act as a neutral third party; and

(b) uphold the following fiduciary duties to both parties:

(i) obedience, which obligates the limited agent to obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;

(ii) reasonable care and diligence;

(iii) holding safe all money or property entrusted to the limited agent; and

(iv) any additional duties created by the agency agreement;

(5) prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:

(a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;

(b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;

(c) the licensee's agency relationship(s);

(d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and

(ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;

(6) in order to offer any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;

(7) in order to offer a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:

(a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and

(b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;

(8) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;

(9) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:

(a) in the currently approved Real Estate Purchase Contract; or

(b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;

(10) when executing a lease or rental agreement, confirm the prior agency disclosure by:

(a) incorporating it into the agreement; or

(b) attaching it as a separate document;

(11) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:

(a) notify the listing brokerage that sub-agency is requested; and

(b) enter into a written agreement with the listing brokerage with which the seller has contracted:

(i) consenting to the sub-agency; and

(ii) defining the scope of the agency;

(c) obtain from the listing brokerage all available information about the property; and

(d) uphold the same fiduciary duties outlined in this Subsection (1);

(12) provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;

(13)(a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:

(i) the principal broker's individual name; or

(ii) the principal broker's brokerage name; and

(b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;

(14) timely inform the licensee's principal broker or branch broker of real estate transactions in which:

(a) the licensee is involved as agent or principal;

(b) the licensee has received funds on behalf of the principal broker; or

(c) an offer has been written;

(15)(a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and

(b) ensure that any such compensation is paid to the licensee's principal broker;

(16)(a) in negotiating and closing a transaction, a licensee may fill out those legal forms as provided for in Section 61-2f-306;

(17) use an approved addendum form to make a counteroffer or any other modification to a contract;

(18) in order to sign or initial a document on behalf of a principal in a sales transaction:

(a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;

(b) retain in the file for the transaction a copy of said power of attorney;

(c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;

(d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and

(e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"

(19) in order to sign or initial a document on behalf of a principal in a property management transaction:

(a) obtain prior written authorization executed by the principal which specifically identifies the actions that are authorized to be taken on behalf of the principal;

(b) retain in the file for the transaction a copy of the written authorization;

(c) sign as follows: "by (Licensee's Name), on behalf of Owner;" and

(d) initial as follows: "by (Licensee's inititials), on behalf of Owner;"

(20) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;

(21) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;

(22) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:

(a) the conditions and other terms under which the property is guaranteed to be sold or purchased;

(b) the charges or other costs for the service or plan;

(c) the price for which the property will be sold or purchased; and

(d) the approximate net proceeds the seller may reasonably expect to receive;

(23) immediately deliver money received in a real estate transaction to the principal broker for deposit; and

(24) as contemplated by Subsection 61-2f-401(19), when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days.

R162-2f-401b. Prohibited Conduct As Applicable to All Licensed Individuals.

An individual licensee may not:

(1) engage in any of the practices described in Section 61-2f-401 et seq., whether acting as agent or on the licensee's own account, in a manner that:

(a) fails to conform with accepted standards of the real estate sales, leasing, or management industries;

(b) could jeopardize the public health, safety, or welfare; or

(c) violates any provision of Title 61, Chapter 2f et seq. or the rules of this chapter;

(2) require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties signing a contract evidencing agreement to the terms thereof;

(3) make a misrepresentation to the division:

(a) in an application for license renewal; or

(b) in an investigation.

(4)(a) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or

(b) knowingly participate in a transaction in which such a false device is used;

(5) participate in a transaction in which a buyer enters into an agreement that:

(a) is not disclosed to the lender; and

(b) if disclosed, might have a material effect on the terms or the granting of the loan;

(6) use or propose the use of a double contract;

(7) place a sign on real property without the written consent of the property owner;

(8) take a net listing;

(9) sell listed properties other than through the listing broker;

(10) subject a principal to paying a double commission without the principal's informed consent;

(11) enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;

(12) pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect, except that:

(a) a licensee may give a gift valued at $150 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction; and

(b) as to a property management transaction, a licensee may compensate an unlicensed employee or current tenant up to $200 per lease for assistance in retaining an existing tenant or securing a new tenant;

(13) accept a referral fee from:

(a) a lender; or

(b) a mortgage broker;

(14) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:

(a) mortgage loan originator, associate lending manager, or principal lending manager;

(b) appraiser or appraiser trainee;

(c) escrow agent; or

(d) provider of title services;

(15) act or attempt to act as a limited agent in any transaction in which:

(a) the licensee is a principal in the transaction; or

(b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction;

(16) make a counteroffer by striking out, whiting out, substituting new language, or otherwise altering:

(a) the boilerplate provisions of the Real Estate Purchase Contract; or

(b) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;

(17) advertise or offer to sell or lease property without the written consent of:

(a) the owner of the property; and

(b) if the property is currently listed, the listing broker;

(18) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;

(19) represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a(23);

(20) when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information;

(21) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued;

(22) in a short sale, have the seller sign a document

allowing the licensee to lien the property; or

(23) charge any fee that represents the difference between:

(a) the total concessions authorized by a seller and the actual amount of the buyer's closing costs; or

(b) in a short sale, the sale price approved by the lender and the total amount required to clear encumbrances on title and close the transaction.

R162-2f-401c. Additional Provisions Applicable to Principal Brokers.

(1) A principal broker shall:

(a) strictly comply with the record retention and maintenance requirements of Subsection R162-2f-401k;

(b) provide to the person whom the principal broker represents in a real estate transaction:

(i) a detailed statement showing the current status of a transaction upon the earlier of:

(A) the expiration of 30 days after an offer has been made and accepted; or

(B) a buyer or seller making a demand for such statement; and

(ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;

(c)(i) regardless of who closes a real estate transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:

(A) the principal broker;

(B) an associate broker or branch broker affiliated with the principal broker; or

(C) the sales agent who is:

(I) affiliated with the principal broker; and

(II) representing the principal in the transaction; and

(ii) ensure the principals in each closed real estate transaction receive copies of all documents executed in the transaction closing;

(d) in order to assign all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:

(i) an identification of the property involved in the real estate transaction;

(ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;

(iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;

(iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and

(v) additional instructions at the discretion of the principal broker;

(e) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;

(f) exercise active supervision over the conduct of all licensees and unlicensed staff employed by or affiliated with the principal broker, whether acting as:

(i) the principal broker for an entity; or

(ii) a branch broker;

(g) strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;

(h) strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;

(i)(i) except as provided in this Subsection (1)(i)(iii), within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:

(A) maintained by the principal broker pursuant to Section R162-2f-403; or

(B) if the parties to the transaction agree in writing, maintained by:

(I) a title company pursuant to Section 31A-23a-406; or

(II) another authorized escrow entity; and

(ii) within three business days of receiving money from a client or a tenant in a property management transaction, deposit the money into a trust account maintained by the principal broker pursuant to Section R162-2f-403 or forward or deposit client or tenant money into an account maintained by the property owner;

(iii) a principal broker is not required to comply with this Subsection (1)(i)(i) or (ii) if:

(A) the contract or other written agreement states that the money is to be:

(I) held for a specific length of time; or

(II) as to a real estate transaction, deposited upon acceptance by the seller; or

(B) as to a real estate transaction, the Real Estate Purchase Contract or other written agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:

(I) names the seller as payee; and

(II) is retained in the principal broker's file until closing;

(j)(i) maintain at the principal business location a complete record of all consideration received or escrowed for real estate and property management transactions; and

(ii) be personally responsible at all times for deposits held in the principal broker's trust account;

(k)(i)(A)(I) in a real estate transaction, assign a consecutive, sequential number to each offer; and

(II) assign a unique identification to each property management client; and

(B) include the transaction number or client identification, as applicable, on:

(I) trust account deposit records; and

(II) trust account checks or other equivalent records evidencing the transfer of trust funds;

(ii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

(iii) maintain a record of each rejected offer in a real estate transaction that does not involve funds deposited to trust:

(A) in separate files; or

(B) in a single file holding all such offers; and

(l) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in this Subsection (1):

(i) actively supervise any such associate broker or branch broker; and

(ii) remain personally responsible and accountable for adequate supervision of all licensees and unlicensed staff affiliated with the principal broker.

(2) A principal broker shall not be deemed in violation of this Subsection (1)(f) where:

(a) an affiliated licensee or unlicensed staff member violates a provision of Title 61, Chapter 2f et seq. or the rules promulgated thereunder;

(b) the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such a violation;

(c) reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures;

(d) upon learning of the violation, the broker attempted to prevent or mitigate the damage;

(e) the broker did not participate in the violation;

(f) the broker did not ratify the violation; and

(g) the broker did not attempt to avoid learning of the violation.

R162-2f-401d. School and Provider Conduct.

(1) Affirmative duties. A school's owner(s) and director(s) shall:

(a) within 15 days after the occurrence of any material change in the information provided to the division under Subsection R162-2f-206a(2)(a), give the division written notice of that change;

(b)(i) provide instructors of prelicensing courses with the state-approved course outline; and

(ii) ensure that any prelicensing course adheres to the topics mandated in the state-approved course outline;

(c) ensure that all instructors comply with Section R162-2f-401e.

(d) prior to accepting payment from a prospective student for a prelicensing education course:

(i) provide the criminal history disclosure statement described in Subsection R162-2f-206a(3)(d);

(ii) obtain the student's signature on the criminal history disclosure; and

(iii) have the enrollee verify that an education waiver has not been obtained from the division;

(e)(i) retain signed criminal history disclosures for a minimum of three years from the date of course completion; and

(ii) make the signed criminal history disclosures available for inspection by the division upon request;

(f) maintain for a minimum of three years after enrollment:

(i) the registration record of each student;

(ii) the attendance record of each student; and

(iii) any other prescribed information regarding the offering, including exam results, if any;

(g) ensure that course topics are taught only by:

(i) certified instructors; or

(ii) guest lecturers;

(h)(i) limit the use of approved guest lecturers to a total of 20% of the instructional hours per approved course; and

(ii) prior to using a guest lecturer to teach a portion of a course, document for the division the professional qualifications of the guest lecturer;

(i) furnish to the division an updated roster of the school's approved instructors and guest lecturers each time there is a change;

(j) within ten days of teaching a course, upload course completion information for any student who:

(i) successfully completes the course; and

(ii) provides an accurate name or license number within seven business days of attending the course;

(k) substantiate, upon request by the division, any claims made in advertising; and

(l) include in all advertising materials the continuing education course certification number issued by the division.

(2) Prohibited conduct. A school may not:

(a) award continuing education credit for a course that has not been certified by the division prior to its being taught;

(b) award continuing education credit to any student who fails to:

(i) attend a minimum of 90% of the required class time; or

(ii) pass a prelicense course final examination;

(c) accept a student for a reduced number of hours without first having a written statement from the division defining the exact number of hours the student must complete;

(d) allow a student to challenge by examination any course or part of a course in lieu of attendance;

(e) allow a course approved for traditional education to be:

(i) taught in a private residence; or

(ii) completed through home study;

(f) make a misrepresentation in advertising about any course of instruction;

(g) disseminate advertisements or public notices that disparage the dignity and integrity of the real estate profession;

(h) make disparaging remarks about a competitor's services or methods of operation;

(i) attempt by any means to obtain or use the questions on the prelicensing examinations unless the questions have been dropped from the current exam bank;

(j) give valuable consideration to a real estate brokerage or licensee for referring students to the school;

(k) accept valuable consideration from a real estate brokerage or licensee for referring students to the brokerage;

(l) allow real estate brokerages to solicit for agents at the school during class time, including the student break time;

(m) obligate or require students to attend any event in which a brokerage solicits for agents;

(n) award more than eight credit hours per day per student;

(o) award credit for an online course to a student who fails to complete the course within one year of the registration date;

(p) advertise or market a continuing education course that has not been:

(i) approved by the division; and

(ii) issued a current continuing education course certification number; or

(q) advertise, market, or promote a continuing education course with language indicating that division certification is pending or otherwise forthcoming.

R162-2f-401e. Instructor Conduct.

(1) Affirmative duties. An instructor shall:

(a) adhere to the approved outline for any course taught;

(b) comply with a division request for information within ten business days of the date of the request; and

(c) maintain a professional demeanor in all interactions with students.

(2) Prohibited conduct. An instructor may not:

(a) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(b) continue to teach any course after the course has expired and without renewing the course certification.

R162-2f-401f. Approved Forms.

The following standard forms are approved by the commission and the Office of the Attorney General for use by all licensees:

(1) August 27, 2008, Real Estate Purchase Contract;

(2) January 1, 1987, Uniform Real Estate Contract;

(3) October 1, 1983, All Inclusive Trust Deed;

(4) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(5) August 5, 2003, Addendum to Real Estate Purchase Contract;

(6) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;

(7) January 1, 1999, Buyer Financial Information Sheet;

(8) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;

(9) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;

(10) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract; and

(11) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

R162-2f-401g. Use of Personal Assistants.

In order to employ an unlicensed individual to provide assistance in connection with real estate transactions, an individual licensee shall:

(1) obtain the permission of the licensee's principal broker before employing the individual;

(2) supervise the assistant to ensure that the duties of an unlicensed assistant are limited to those that do not require a real estate license, including the following:

(a) performing clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact is initiated by the prospect and not by the unlicensed assistant;

(b) at an open house, distributing preprinted literature written by a licensee, where a licensee is present and the unlicensed person provides no additional information concerning the property or financing, and does not become involved in negotiating, offering, selling or completing contracts;

(c) acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion or completion of forms or documents;

(d) placing brokerage signs on listed properties;

(e) having keys made for listed properties; and

(f) securing public records from a county recorder's office, zoning office, sewer district, water district, or similar entity;

(3) compensate a personal assistant at a predetermined rate that is not:

(a) contingent upon the occurrence of real estate transactions; or

(b) determined through commission sharing or fee splitting; and

(4) prohibit the assistant from engaging in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in this Subsection (2)(a).

R162-2f-401h. Requirements and Restrictions in Advertising.

(1) Except as provided for in subsections (2) and (3), a licensee shall not advertise or permit any person employed by or affiliated with the licensee to advertise real estate services or property in any medium without clearly and conspicuously identifying in the advertisement the name of the brokerage with which the licensee is affiliated.

(2) When it is not reasonable for a licensee to identify the name of the brokerage in an electronic advertisement, the licensee shall ensure the electronic advertisement directly links to a display that clearly and conspicuously identifies the name of the brokerage.

(3) A licensee is not required to identify the name of the brokerage with which the licensee is affiliated if:

(a) the licensee advertises a property not currently listed with the brokerage with which the licensee is affiliated;

(b) the licensee has an ownership interest in the property; and

(c) the advertisement identifies the name of the individual licensee as "owner-agent" or "owner-broker."

(4) The name of the brokerage identified by a licensee in an advertisement shall be the name of the brokerage as shown on division records.

(5) A team, group, or other marketing entity which includes one or more licensees shall be subject to the same requirements and restrictions with regard to advertising as is an individual licensee.

(6)(a) If a licensee advertises a guaranteed sales plan, the advertisement shall include, in a clear and conspicuous manner:

(i) a statement that costs and conditions may apply; and

(ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(23).

(b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

R162-2f-401i. Standards for Real Estate Auctions.

For auctions of real property in this state:

(1) the auctioneer or auction company shall:

(a) be licensed as a principal broker under Utah Code Title 61, Chapter 2f; or

(b) affiliate with a licensed principal broker for purposes of advertising and conducting all aspects of the auction;

(2) the auctioneer or auction company shall not advertise the services of the auctioneer or auction company directly to an owner of real property who is already subject to an agency agreement;

(3) if an auctioneer or auction company affiliates with a principal broker as provided in Utah Administrative Code R162-2f-401i(1)(b), the principal broker shall:

(a) ensure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions;

(b) ensure that advertising and promotional materials associated with an auction name the principal broker;

(c) attend and supervise the auction;

(d) ensure that any purchase agreement used at the auction is completed by an individual holding an active Utah real estate license and is filled out in compliance with Section 61-2f-306;

(e) ensure that any money deposited at the auction is placed in trust pursuant to Utah Administrative Code R162-2f-401c(1)(i); and

(f) ensure that adequate arrangements are made for the closing of any real estate transaction arising out of the auction.

R162-2f-401j. Standards for Property Management.

(1) Property management performed by a real estate brokerage, or by licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage as registered with the division unless the principal broker holds a dual broker license and obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.

(2) In addition to fulfilling all duties related to supervision per Section 61-2f-401(12), the principal broker of a registered entity, and the branch broker of a registered branch, shall implement training to ensure that each sales agent, associate broker, and unlicensed employee who is affiliated with the licensee has the knowledge and skills necessary to perform assigned property management tasks within the boundaries of these rules, including this Subsection R162-2f-401j(3).

(3) An unlicensed individual employed by a real estate or property management company may perform the following services under the supervision of the principal broker without holding an active real estate license:

(a) providing a prospective tenant with access to a rental unit;

(b) providing secretarial, bookkeeping, maintenance, or rent collection services;

(c) quoting rent and lease terms as established or approved by the principal broker;

(d) completing pre-printed lease or rental agreements, except as to terms that may be determined through negotiation of the principals;

(e) serving or receiving legal notices;

(f) addressing tenant or neighbor complaints; and

(g) inspecting units.

(4) Within 30 days of the termination of a contract with a property owner for property management services, the principal broker shall deliver all trust money to the property owner, the property owner's designated agent, or other party as designated under the contract with the property owner.

R162-2f-401k. Recordkeeping Requirements.

A principal broker shall:

(1) maintain and safeguard the following records to the extent they relate to the business of a principal broker:

(a) all trust account records;

(b) any document submitted by a licensee affiliated with the principal broker to a lender or underwriter as part of a real estate transaction;

(c) any document signed by a seller or buyer with whom the principal broker or an affiliated licensee is required to have an agency agreement; and

(d) any document created or executed by a licensee over whom the principal broker has supervisory responsibility pursuant to Subsection R162-2f-401c(1)(f);

(2) maintain the records identified in Subsection R162-2f-401k(1):

(a)(i) physically:

(A) at the principal business location designated by the principal broker on division records; or

(B) where applicable, at a branch office as designated by the principal broker on division records; or

(ii) electronically, in a storage system that complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act; and

(b) for at least three calendar years following the year in which:

(i) an offer is rejected; or

(ii) the transaction either closes or fails;

(3) upon request of the division, make any record identified in Subsection R162-2f-401k(1) available for inspection and copying by the division;

(4) notify the division in writing within ten business days after terminating business operations as to where business records will be maintained; and

(5) upon filing for brokerage bankruptcy, notify the division in writing of:

(a) the filing; and

(b) the current location of brokerage records.

R162-2f-401l. Gifts and Inducements.

(1) An inducement gift is permissible and is not an illegal sharing of commission if the principal broker or affiliated licensee offering the inducement gift to a buyer or a seller complies with the underwriting guidelines that apply to any loan in the transaction for which the inducement has been offered.

(2) A closing gift is permissible and is not an illegal sharing of commissions.

R162-2f-402. Investigations.

The investigative and enforcement activities of the division shall include the following:

(1) verifying information provided on new license applications and applications for license renewal;

(2) evaluation and investigation of complaints;

(3) auditing licensees' business records, including trust account records;

(4) meeting with complainants, respondents, witnesses and attorneys;

(5) making recommendations for dismissal or prosecution;

(6) preparation of cases for formal or informal hearings, restraining orders, or injunctions;

(7) working with the assistant attorney general and representatives of other state and federal agencies; and

(8) entering into proposed stipulations for presentation to the commission and the director.

R162-2f-403a. Trust Accounts - General Provisions.

(1) A principal broker shall:

(a)(i) if engaged in listing or selling real estate, maintain at least one real estate trust account in a bank or credit union located within the state of Utah; and

(ii) if engaged in property management, refer to Subsection R162-2f-403b(3);

(b) at the time a trust account is established, notify the division in writing of:

(i) the account number;

(ii) the address of the bank or credit union where the account is located; and

(iii) the type of activity for which the account is used.

(2) A trust account maintained by a principal broker shall be non-interest-bearing, unless:

(a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account;

(b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the sale;

(c) the person designated under this Subsection (2)(b):

(i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and

(ii) operates exclusively to provide grants to affordable housing programs in Utah; and

(d) the affordable housing program that is the recipient of the grant under this Subsection (2)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.

(3) A principal broker may not deposit into the principal broker's real estate trust account funds received in connection with rental of tourist accommodations where the rental period is less than 30 consecutive days.

(4) Records of deposits to a trust account shall include:

(a) transaction number or unique client identifier, as applicable pursuant to Subsection R162-2f-401c(1)(k);

(b) identification of payee and payor;

(c) amount of deposit;

(d) location of property subject to the transaction; and

(e) date and place of deposit.

(5) Any instrument by which funds are disbursed from a real estate or property management trust account shall include:

(a) the business name of the registered entity;

(b) the address of the registered entity;

(c) clear identification of the trust account from which the disbursement is made, including:

(i) account name; and

(ii) account number;

(iii) transaction number or unique client identification, as applicable, pursuant to Subsection R162-2f-401c(1)(k);

(iv) date of disbursement;

(v) clear identification of payee and payor;

(vi) amount disbursed;

(vii) notation identifying the purpose for disbursement; and

(viii) check number, wire transfer number, or equivalent bank or credit union instrument identification.

(6) Any instrument of conveyance that is voided shall be clearly marked with the term "void" and the original instrument retained pursuant to Subsection R162-2f-401k.

(7) If both parties to a contract make a written claim to money held in a principal broker's trust fund and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:

(a) interplead the funds into court and thereafter disburse:

(i) upon written authorization of the party who will not receive the funds; or

(ii) pursuant to the order of a court of competent jurisdiction; or

(b) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:

(i) no party has filed a civil suit arising out of the transaction; and

(ii) the parties have contractually agreed to submit disputes arising out of their contract to mediation.

(8) If a principal broker is unable to disburse trust funds within five years after the failure of a transaction, the principal broker shall remit the funds to the State Treasurer's Office as unclaimed property pursuant to Title 67, Chapter 4a et seq.

(9) Trust account reconciliation. For each real estate or property management trust account operated by a registered entity, the principal broker of the entity shall:

(a) maintain a date-sequential record of all deposits to and disbursements from the account, including or cross-referenced to the information specified in Subsection R162-2f-401c(1)(k);

(b) maintain a current, running total of the balance contained in the trust account;

(c)(i) maintain records sufficient to detail the final disposition of all funds associated with each transaction; and

(ii) ensure that each closed transaction balances to zero;

(d) reconcile the brokerage trust account records with the bank or credit union records at least monthly; and

(e) upon request, make all trust account records available to the division for auditing or investigation.

(10) The principal broker shall notify the division within 30 days if:

(a) the principal broker receives, from a bank or credit union in which the principal broker maintains a real estate or property management trust account, documentation to evidence that the trust account is out of balance; and

(b) the imbalance cannot be cured within the 30-day notification period.

R162-2f-403b. Real Estate Trust Accounts.

(1) A real estate trust account shall be used for the purpose of securing client funds:

(a) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f et seq.;

(b) if the principal broker is also a builder or developer, deposited under a Real Estate Purchase Contract, construction contract, or other agreement that provides for the construction of a dwelling; and

(c) collected in the performance of property management duties, pursuant to this Subsection (3).

(2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into the real estate trust account more than $500 of the principal broker's own funds.

(3)(a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish at least one property management trust account that is:

(i) separate from the real estate trust account; and

(ii) operated in accordance with Subsection R162-2f-403c.

(b) A principal broker who collects rents or otherwise manages property for no more than six individual units at any given time may use the real estate trust account to secure funds received in connection with the principal broker's property management activities.

(4) Unless otherwise agreed pursuant to this Subsection (5)(b), a principal broker may not pay a commission from the real estate trust account without first:

(a) obtaining written authorization from the buyer and seller, through contract or otherwise;

(b) closing or otherwise terminating the transaction;

(c) delivering the settlement statement to the buyer and seller;

(d) ensuring that the buyer or seller whom the principal broker represents has been paid the amount due as determined by the settlement statement;

(e) making a record of each disbursement; and

(f) depositing funds withdrawn as the principal broker's commission into the principal broker's operating account prior to further disbursing the money.

(5) A principal broker may disburse funds from a real estate trust account only in accordance with:

(a) specific language in the Real Estate Purchase Contract authorizing disbursement;

(b) other proper written authorization of the parties having an interest in the funds; or

(c) court order.

(6) A principal broker may not release for construction purposes those funds held as deposit money under an agreement that provides for the construction of a dwelling unless the purchaser authorizes such disbursement in writing.

(7) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:

(a) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or

(b) the parties execute a separate signed agreement containing instructions and authorization for disbursement.

R162-2f-403c. Property Management Trust Accounts.

(1) As of January 1, 2014, a trust account that is used exclusively for property management purposes shall be used to secure the following:

(a) tenant security deposits;

(b) rents; and

(c) money tendered by a property owner as a reserve fund or for payment of unexpected expenses.

(2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into a property management trust account any funds belonging to the principal broker without:

(a) maintaining records to clearly identify the total amount belonging to the principal broker; or

(b) performing a monthly line-item reconciliation of all deposits and withdrawals of funds belonging to the principal broker.

(3) A principal broker may disburse funds from a property management trust account only in accordance with:

(a) specific language in the property management contract or tenant lease agreement, as applicable, authorizing disbursement;

(b) other proper written authorization of the parties having an interest in the funds; or

(c) court order.

(4) A principal broker who transfers funds from a property management trust account for any purpose shall maintain records to clearly evidence that:

(a) prior to making the transfer, the principal broker verified the money as belonging to the property owner for whose benefit, or on whose instruction, the funds are transferred;

(b) any money transferred into an operating account as the principal broker's property management fee is earned according to the terms of the principal broker's contract with the property owner;

(c) any transfer for maintenance, repair, or similar purpose is:

(i) authorized according to the terms of the applicable property management contract, tenant lease agreement, or other instruction of the property owner; and

(ii) used strictly for the purpose for which the transfer is authorized, with any excess returned to the trust account.

R162-2f-407. Administrative Proceedings.

(1) An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(2) Other adjudicative proceedings.

(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be designated as either formal or informal in the division's notice of agency action or notice of proceeding, as applicable.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Licensing and Practices Act or by these rules.

(3) Hearings required. A hearing before the commission shall be held in a proceeding:

(a) commenced by the division for disciplinary action pursuant to Section 61-2f-401 and Subsection 63G-4-201(2);

(b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing;

(c) appealing a division order denying or restricting a license; and

(d) when an application presents unusual circumstances, such that the division determines that the application should be heard by the commission.

(4) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to a member of the commission or an administrative law judge.

(b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(c) Except as provided in this Subsection (5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this Subsection 407, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing:

(i) to the respondent at the address last provided to the division pursuant to Section 61-2f-207; and

(ii) if the respondent is an actively licensed sales agent or associate broker, to the principal broker with whom the respondent is affiliated.

(f) Formal discovery is prohibited.

(g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

(l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(m) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(5) Additional procedures for informal disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit lists to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from the witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

(6) Formal adjudicative proceedings shall be conducted pursuant to the Administrative Procedures Act and the rules promulgated by the Department of Commerce.

R162-2f-501. Appendices.

(1) When calculating experience points in Table 1, experience points for a transaction subject to an agency agreement other than an exclusive brokerage agreement as defined in Utah Code Subsection 61-2f-308(1)(d) are limited to one-quarter of the points described in Table 1.

(2) When calculating experience points from Tables 1 and 2, experience points are limited to points for those activities which require a real estate license and comply with R162-2f-401a. A minimum of one-half of the points in Tables 1 and 2 must derive from transactions of properties located in the state of Utah.

TABLE 1
APPENDIX 1 - REAL ESTATE SALES TRANSACTIONS

EXPERIENCE TABLE

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:

(a)	One unit dwelling	2.5 points
(b)	Two- to four-unit dwellings	5 points
(c)	Apartments, 5 units or over	10 points
(d)	Improved lot	2 points
(e)	Vacant land/subdivision	10 points

COMMERCIAL

(f)	Hotel or motel	10 points
(g)	Industrial or warehouse	10 points
(h)	Office building	10 points
(i)	Retail building	10 points

TABLE 2
APPENDIX 2 - LEASING TRANSACTIONS AND PROPERTY MANAGEMENT EXPERIENCE TABLE

RESIDENTIAL

(a)	Each property management agreement	1 point per unit up to 5 points
(b)	Each unit leased	1.25 points per unit
*(c)	All other property management	0.25 pt/month

COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building

(a)	Each property management agreement	1 point per unit up to 5 points
(b)	Each unit leased	1.25 points per unit
*(c)	All other property management	1 pt/month

*When calculating experience points from Table 2, the total combined monthly experience credit claimed for "All other property management" combined, both residential and commercial, may not exceed 25 points in any application to practice as a real estate broker.

TABLE 3
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

KEY: real estate business, operational requirements, trust account records, notification requirements
January 19, 2017 **61-2f-103(1)**
Notice of Continuation August 12, 2015 **61-2f-105**
61-2f-203(1)(e)
61-2f-206(3)
61-2f-206(4)(a)
61-2f-306
61-2f-307

R277. Education, Administration.
R277-404. Requirements for Assessments of Student Achievement.
R277-404-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Sections 53A-1-603 through 53A-1-611, which direct the Board to adopt rules for the maintenance and administration of U-PASS;

(c) Subsection 53A-15-1403(9)(b), which requires the Board to adopt rules to establish a statewide procedure for excusing a student from taking certain assessments; and

(d) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) provide consistent definitions; and

(b) assign responsibilities and procedures for a Board developed and directed comprehensive assessment system for all students, as required by state and federal law.

R277-404-2. Definitions.

(1) "Benchmark reading assessment" means the Board approved literacy assessment that is administered to a student in grade 1, grade 2, and grade 3 at the beginning, middle, and end of year.

(2) "College readiness assessment" means the American College Testing exam, or ACT.

(3) "English Learner" or "EL" student" means a student who is learning in English as a second language.

(4) "English language proficiency assessment" means the World-class Instructional Design and Assessment (WIDA) Assessing Comprehension in English State-to-State (ACCESS), which is designed to measure the acquisition of the academic English language for an English Learner student.

(5) "Family Educational Rights and Privacy Act of 1974" or "FERPA," 20 U.S.C. 1232g, means a federal law designed to protect the privacy of students' education records.

(6) "National Assessment of Education Progress" or "NAEP" means the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.

(7) "Online writing assessment" means the SAGE writing portion of the SAGE English Language Arts Assessment that measures writing performance for a student in grades 3 through 11.

(8) "Pre-post assessment" means an assessment administered at the beginning of the school year and at the end of the school year to determine individual student growth in academic proficiency that has occurred during the school year.

(9) "State required assessment" means an assessment described in Subsection 53A-15-1403(9)(a).

(10) "Student Assessment of Growth and Excellence" or "SAGE" means a computer adaptive assessment for:

(a) English language arts grades 3 through 11;

(b) mathematics:

(i) grades 3 through 8; and

(ii) Secondary I, II, and III; and

(c) science:

(i) grades 4 through 8;

(ii) earth science;

(iii) biology;

(iv) physics; and

(v) chemistry.

(11) "Section 504 accommodation plan" means a plan:

(a) required by Section 504 of the Rehabilitation Act of 1973; and

(b) designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(12) "Summative adaptive assessment" means the SAGE assessment, which:

(a) is administered upon completion of instruction to assess a student's achievement;

(b) is administered online under the direct supervision of a licensed educator;

(c) is designed to identify student achievement on the standards for the respective grade and course; and

(d) measures a range of student ability, within the grade or course level standards the student was taught, by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.

(13)(a) "Utah alternate assessment" means an assessment instrument:

(i) for a student in special education with a disability so severe the student is not able to participate in the components of U-PASS even with an assessment accommodation or modification; and

(ii) that measures progress on the Utah core instructional goals and objectives in the student's IEP.

(b) "Utah alternate assessment" means:

(i) for science, the Utah Alternate Assessment (UAA); and

(ii) for English language arts and mathematics, the Dynamic Learning Maps (DLM).

(14) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows:

(a) an LEA and the Superintendent to electronically exchange an individual detailed student record; and

(b) electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

(15) "Utah Performance Assessment System for Students" or "U-PASS" means:

(a) the summative adaptive assessment of a student in grades 3 through 12 in basic skills courses;

(b) the online writing assessment in grades 3 through 11;

(c) the college readiness assessment; and

(d) the summative assessment of a student in grade 3 to measure reading grade level using the end of year benchmark reading assessment.

R277-404-3. Incorporation of Standard Test Administration and Testing Ethics Policy by Reference.

(1) This rule incorporates by reference the Standard Test Administration and Testing Ethics Policy, September 9, 2016, which establishes:

(a) the purpose of testing;

(b) the state assessments to which the policy applies;

(c) teaching practices before assessment occurs;

(d) required procedures for after an assessment is complete and for providing assessment results;

(e) unethical practices;

(f) accountability for ethical test administration;

(g) procedures related to ethics violations; and

(h) additional resources.

(2) A copy of the Standard Test Administration and Testing Ethics Policy is located at:

(a) http://www.schools.utah.gov/assessment/Directors/Resources.aspx; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-404-4. Assessment System - Superintendent

Responsibilities.

(1) The Board's comprehensive assessment system for all students in grades K-12 includes:

(a) the U-PASS assessments;

(b) pre-post kindergarten assessment for a kindergarten student as determined by the LEA;

(c) the benchmark reading assessment;

(d) the Utah alternate assessment, for an eligible student with a disability;

(e) the English language proficiency assessment;

(f) the National Assessment of Educational Progress (NAEP); and

(g) reporting by the Superintendent of U-PASS results.

(2) The report required by Subsection(1)(g) shall include:

(a) student performance based on information that is disaggregated with respect to race, ethnicity, gender, English proficiency, eligibility for special education services, and free or reduced price school lunch status;

(b) security features to maintain the integrity of the system, including statewide uniform assessment dates, assessment administration protocols, and training; and

(c) summative adaptive assessment results disseminated by the Superintendent to an LEA, parent, and other, as appropriate, consistent with FERPA.

(3) The Superintendent shall provide guidelines, timelines, procedures, and assessment ethics training and requirements for all required assessments.

(4) The Superintendent shall designate a testing schedule for each state-required assessment and publish the testing window dates on the Board's website before the beginning of the school year.

R277-404-5. LEA Responsibilities - Time Periods for Assessment Administration.

(1) Except as provided in Section 53A-1-603, an LEA shall develop a comprehensive assessment system plan to include the assessments described in Subsection R277-404-5(1).

(2) The plan shall include:

(a) the dates that the LEA will administer each required assessment;

(b) if the LEA decided to offer its grade 11 students only the college readiness assessment and not the SAGE assessment;

(c) professional development for an educator to fully implement the assessment system;

(d) training for an educator and an appropriate paraprofessional in the requirements of assessment administration ethics;

(e) training for an educator and an appropriate paraprofessional to utilize assessment results effectively to inform instruction; and

(f) adequate oversight of test administration to ensure compliance with Section 53A-1-603 as follows:

(i) an LEA or online provider shall test all enrolled students unless a student has a written parental excuse under Subsection 53A-15-1403(9);

(ii) a student participating in the Statewide Online Education Program is assessed consistent with Section 53A-15-1210; and

(iii) a third party vendor or contractor may not administer or supervise U-PASS.

(3) An LEA shall submit the plan to the Superintendent by September 15 annually.

(4) At least once each school year, an LEA shall provide professional development for all educators, administrators, and standardized assessment administrators concerning guidelines and procedures for standardized assessment administration, including educator responsibility for assessment security and proper professional practices.

(5) LEA assessment staff shall use the Standard Test Administration and Testing Ethics Policy in providing training for all assessment administrators and proctors.

(6) An LEA may not release state assessment data publicly until authorized to do so by the Superintendent.

(7) An LEA educator or trained employee shall administer assessments required under R277-404-5 consistent with the testing schedule published on the Board's website.

(8) An LEA educator or trained employee shall complete all required assessment procedures prior to the end of the assessment window defined by the Superintendent.

(9)(a) If an LEA requires an alternative schedule with assessment dates outside of the Superintendent's published schedule, the LEA shall submit the alternative testing plan to the Superintendent by September 15 annually.

(b) The alternative testing plan shall set dates for summative adaptive assessment administration for courses taught face to face or online.

R277-404-6. School Responsibilities.

(1) An LEA, school, or educator may not use a student's score on a state required assessment to determine:

(a) the student's academic grade, or a portion of the student's academic grade, for the appropriate course; or

(b) whether the student may advance to the next grade level.

(2) An LEA and school shall require an educator and assessment administrator and proctor to individually sign the Testing Ethics signature page provided by Superintendent acknowledging or assuring that the educator administers assessments consistent with ethics and protocol requirements.

(3) All educators and assessment administrators shall conduct assessment preparation, supervise assessment administration, and certify assessment results before providing results to the Superintendent.

(4) All educators and assessment administrators and proctors shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, and the Standard Test Administration and Testing Ethics Policy.

(5) A student's IEP, EL, or Section 504 accommodation plan team shall determine an individual student's participation in statewide assessments consistent with the Utah Participation and Accommodations Policy.

R277-404-7. Student and Parent Participation in Student Assessments in Public Schools; Parental Exclusion from Testing and Safe Harbor Provisions.

(1)(a) Parents are primarily responsible for their children's education and have the constitutional right to determine which aspects of public education, including assessment systems, in which their children participate.

(b) Parents may further exercise their inherent rights to exempt their children from a state required assessment without further consequence by an LEA.

(2) An LEA shall administer state required assessments to all students unless:

(a) the Utah alternate assessment is approved for specific students consistent with federal law and as specified in the student's IEP; or

(b) students are excused by a parent or guardian under Section 53A-15-1403(9) and as provided in this rule.

(3)(a) A parent may exercise the right to exempt their child from a state required assessment.

(b) Except as provided in Subsection (3)(c), upon exercising the right to exempt a child from a state required assessment under this provision, an LEA may not impose an adverse consequence on a child as a result of the exercise of rights under this provision.

(c) If a parent exempts the parent's child from the basic civics test required in Sections 53A-13-109.5 and R277-700-8, the parent's child is not exempt from the graduation requirement in Subsection 53A-13-109.5(2), and may not graduate without successfully completing the requirements of Sections 53A-13-109.5 and R277-700-8.

(4)(a) In order to exercise the right to exempt a child from a state required assessment under this provision and insure the protections of this provision, a parent shall:

(i) fill out:

(A) the Parental Exclusion from State Assessment Form provided on Board's website; or

(B) an LEA specific form as described in Subsection (4)(b); and

(ii) submit the form:

(A) to the principal or LEA either by email, mail, or in person; and

(B) on an annual basis and at least one day prior to beginning of the assessment.

(b) An LEA may create an LEA specific form for a parent to fill out as described in Subsection (4)(a)(i)(B) if:

(i) the LEA includes a list of local LEA assessments that a parent may exempt the parent's student from as part of the LEA's specific form; and

(ii) the LEA's specific form includes all of the information described in the Parental Exclusion from State Assessment Form provided on Board's website as described in Subsection (4)(a)(i)(A).

(5)(a) A teacher, principal, or other LEA administrator may contact a parent to verify that the parent submitted a parental exclusion form described in Subsection (4)(a)(i).

(b) An LEA may request, but may not require, a parent to meet with a teacher, principal, or other LEA administrator regarding the parent's request to exclude the parent's student from taking a state required assessment.

(6) School grading, teacher evaluations, and student progress reports or grades may not be negatively impacted by students excused from taking a state required assessment.

(7) Any assessment that is not a state required assessment, the administration of the assessments, and the consequence of taking or failing to take the assessments is governed by policy adopted by each LEA.

(8) An LEA shall provide a student's individual test results and scores to the student's parent or guardian upon request and consistent with the protection of student privacy.

(9) An LEA may not reward a student for taking a state required assessment.

R277-404-8. Public Education Employee Compliance with Assessment Requirements, Protocols, and Security.

(1) An educator, test administrator or proctor, administrator, or school employee may not:

(a) provide a student directly or indirectly with a specific question, answer, or the content of any specific item in a standardized assessment prior to assessment administration;

(b) download, copy, print, take a picture of, or make any facsimile of protected assessment material prior to, during, or after assessment administration without express permission of the Superintendent and an LEA administrator;

(c) change, alter, or amend any student online or paper response any other standardized assessment material at any time in a way that alters the student's intended response;

(d) use any prior form of any standardized assessment, including pilot assessment materials, that the Superintendent has not released in assessment preparation without express permission of the Superintendent and an LEA administrator;

(e) violate any specific assessment administrative procedure specified in the assessment administration manual, violate any state or LEA standardized assessment policy or procedure, or violate any procedure specified in the Standard Test Administration and Testing Ethics Policy;

(f) fail to administer a state required assessment;

(g) fail to administer a state required assessment within the designated assessment window;

(h) submit falsified data;

(i) allow a student to copy, reproduce, or photograph an assessment item or component; or

(j) knowingly do anything that would affect the security, validity, or reliability of standardized assessment scores of any individual student, class, or school.

(2) A school employee shall promptly report an assessment violation or irregularity to a building administrator, an LEA superintendent or director, or the Superintendent.

(3) An educator who violates this rule or an assessment protocol is subject to Utah Professional Practices Advisory Commission or Board disciplinary action consistent with R277-515.

(4) All assessment material, questions, and student responses for required assessments is designated protected, consistent with Section 63G-2-305, until released by the Superintendent.

(5)(a) Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to Superintendent following testing, as required by the Superintendent.

(b) An individual educator or school employee may not retain or distribute test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

R277-404-9. Data Exchanges.

(1) The Board's IT Section shall communicate regularly with an LEA regarding the required format for electronic submission of required data.

(2) An LEA shall update UTREx data using the processes and according to schedules determined by the Superintendent.

(3) An LEA shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements established in Rule R277-484.

(4) The Superintendent shall provide direction to an LEA detailing the data exchange requirements for each assessment.

(5) An LEA shall ensure that all summative testing data have been collected and certify that the data are ready for accountability purposes no later than July 12.

(6) An LEA shall verify that it has satisfied all the requirements of the Superintendent's directions described in this section.

(7) Consistent with Utah law, the Superintendent shall return assessment results from all required assessments to the school before the end of the school year.

KEY: assessments, student achievements

January 24, 2017 **Art X Sec 3**

Notice of Continuation November 29, 2016 **53A-1-603 through 53A-1-611**

53A-1-401

R277. Education, Administration. **53A-1-402(1)(b)**
R277-499. Seal of Biliteracy.
R277-499-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-1-402(1)(b), which allows the Board to establish rules and minimum standards for graduation requirements.

(2) The purpose of this rule is to establish rules and procedures for a student to earn a Seal of Biliteracy in conjunction with a high school diploma.

R277-499-2. Definitions.

(1) "Intermediate-Mid" level means a level of language proficiency in terms of speaking, writing, listening, and reading in real-world situations in a spontaneous and non-rehearsed context, as established by the American Council on the Teaching of Foreign Languages or tribal education directors.

(2) "Seal of Biliteracy " means a recognition, awarded in conjunction with a student's high school diploma, which certifies that a student is proficient in English and at Intermediate-Mid level or higher in one or more world languages.

(3) "World language" means a language other than English and includes:

(a) American Sign Language;

(b) American Native Languages, such as Navajo or Ute; and

(c) classical languages, such as Latin.

R277-499-3. Procedures for Award of Seal of Biliteracy.

(1)(a) An LEA may develop a local application process for a student who wishes to earn the Seal of Biliteracy.

(b) An LEA application process shall include procedures for:

(i) advertising the criteria for the Seal of Biliteracy;

(ii) tracking students who may qualify for the Seal of Biliteracy; and

(iii) documenting student progress.

(c) An LEA shall train counselors and world language coordinators to provide information on the application process to interested students.

(d) The Superintendent shall provide an application template which an LEA may use in the application process.

(2) An LEA may award the Seal of Biliteracy to a student who:

(a) demonstrates proficiency in an English assessment; and

(b) demonstrates a minimum of Intermediate Mid-level proficiency in a world language assessment.

(3)(a) The Superintendent shall maintain a list of acceptable national and international tests with qualifying scores to demonstrate proficiency as required by this rule.

(b) The Superintendent shall review and update the list provided by Subsection (3)(a) on a regular basis and publish the information on the Board's website.

(4) If a student meets the requirements of Subsection (2):

(a) the Superintendent shall place the Seal of Biliteracy electronically on the student's transcript; and

(b) an LEA may place a seal on the student's paper diploma.

KEY: biliteracy, seal, world languages
January 10, 2017 **Art X Sec 3**
53A-1-401

R277. Education, Administration.
R277-503. Licensing Routes.
R277-503-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-402, which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) provide minimum eligibility requirements for applicants for teacher licenses;

(b) provide explanation and criteria of various teacher licensing routes;

(c) provide criteria and procedures for licensed teachers to earn endorsements; and

(d) require all applicants for licenses to submit to a criminal background check.

R277-503-2. Definitions.

(1) "Alternative Routes to Licensure advisors" or "ARL advisors" means:

(a) a specialist designated by the Superintendent with specific professional development and educator licensing expertise; and

(b) a curriculum specialist designated by the Superintendent.

(2)(a) "Career and technical education " or "CTE" means organized educational programs that:

(i) prepare individuals for a wide range of high-skill, high-demand careers;

(ii) provide all students with a seamless education system from public education to post-secondary education, driven by a Plan for College and Career Readiness; and

(iii) provide students competency-based instruction, hands-on experiences, and certified occupational skills, culminating in further education and meaningful employment.

(b) CTE areas of study include:

(i) agriculture;

(ii) business and marketing;

(iii) family and consumer sciences;

(iv) health science;

(v) information technology;

(vi) skilled and technical sciences; and

(vii) technology and engineering education.

(3) "Competency-based" means a teacher training approach structured for an individual to master and demonstrate content and teaching skills and knowledge at the individual's own pace and sometimes in alternative settings.

(4) "Core academic subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(5) "Council for Accreditation of Educator Preparation" or "CAEP" means the nationally-recognized organization that provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of k-12 teachers.

(6) "Endorsement" means a supplemental qualification to a teaching license that is based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

(7) "LEA," for purposes of this rule, includes the Utah Schools for the Deaf and the Blind.

(8) "Letter of authorization" means a formal approval given to an individual, such as an out-of-state candidate or a first year ARL candidate who:

(a) is employed by an LEA in a position requiring a professional educator license;

(b) has not completed the requirements for an ARL license or a Level 1, 2, or 3 license; or

(c) has not completed necessary endorsement requirements.

(9) "Level 1 license" means a Utah professional educator license issued by the Board to an applicant who has met all ancillary requirements established by law or rule, and:

(a) completed an approved preparation program;

(b) completed an alternative preparation program;

(c) is approved pursuant to an agreement under the NASDTEC Interstate Contract; or

(d) completed the requirements of R277-511.

(10) "Level 2 license" means a Utah professional educator license issued by the Board after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

(11) "Level 3 license" means a Utah professional educator license issued by the Board to an educator who holds a current Utah Level 2 license and has also received:

(a) National Board Certification;

(b) a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school; or

(i) holds a Speech-Language Pathology area of concentration; and

(ii) has obtained American Speech-Language Hearing Association (ASHA) certification.

(12) "National Association of State Directors of Teacher Education and Certification" or "NASDTEC" means the educator information clearinghouse that maintains an interstate reciprocity agreement and database for its members regarding educators whose licenses have been suspended or revoked.

(13) "National Council for Accreditation of Teacher Education" or "NCATE" means the nationally-recognized organization that accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

(14) "Pedagogical knowledge" means practices and strategies of teaching, classroom management, preparation and planning that are in addition to an educator's content knowledge of an academic discipline.

(15) "Regional accreditation" means formal approval of a school that has met standards considered to be essential for the operation of a quality school program by the following organizations:

(a) Middle States Commission on Higher Education;

(b) New England Association of Schools and Colleges;

(c) North Central Association Commission on Accreditation and School Improvement;

(d) Northwest Accreditation Commission;

(e) Southern Association of Colleges and Schools; and

(f) Western Association of Schools and colleges: Senior College Commission.

(16) "Restricted endorsement" means a qualification

available only to teachers in necessarily existent small school settings based on content area knowledge obtained through a Board-approved program of study or demonstrated through passage of a Board-designated test.

(17) "State-approved Endorsement Plan" or "SAEP" means a plan in place developed between the Superintendent and a licensed educator to direct the completion of endorsement requirements by the educator.

(18) "Teacher Education Accreditation Council" or "TEAC" means the nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

R277-503-3. Licensing Eligibility.

(1) For a license applicant following the traditional college or university license, the license applicant shall:

(a) complete a Board approved college or university teacher preparation program;

(b) be recommended for licensing; and

(c) satisfy all other requirements for educator licensing required by law; or

(2) For a license applicant following an alternative licensing route, the license applicant shall:

(a) have a bachelors degree or higher from an accredited higher education institution in an area related to the position the applicant is seeking;

(b) have skills, talents or abilities, as evaluated by the employing entity, making the applicant appropriate for a licensed teaching position and eligible to participate in an ARL program; and

(c) while participating in an alternative licensing program, be approved for employment under an ARL license.

(3) An ARL program may not exceed three school years.

(4) A license applicant seeking a Level 1 Utah educator license, or an area of concentration, or an endorsement in a core academic subject area shall submit passing scores on a Board-designated content test, where tests are available, prior to the issuance of a renewable license or endorsement.

(5) For each endorsement in a core academic area to be posted on the license, a teacher shall submit passing scores on a Board-designated content tests, where tests are available.

(6) A licensure candidate recommended for a Utah Level 1 license who does not submit a passing score on the test designated in Subsection (4) is not eligible for licensure until achieving a passing score.

(7) All educators licensed under this rule shall also:

(a) complete the background check required under Section 53A-6-401;

(b) satisfy the professional development requirements of R277-500; and

(c) be subject to all Utah licensing requirements and professional standards.

R277-503-4. Licensing Routes - Traditional and Alternative Routes.

(1) An applicant seeking a Utah educator license shall successfully complete the accredited program or legislatively-mandated program consistent with this rule.

(2) To be recognized by the Board, an institution of higher education teacher preparation program shall be:

(a) Nationally accredited by:

(i) CAEP;

(ii) NCATE; or

(iii) TEAC; and

(b) approved by the Board to recommend for licensure in the license area, or endorsements, or both in designated areas.

(3)(a) An applicant who meets the eligibility requirements in Section R277-503-3, and is assigned to teach exclusively in an online setting, is eligible to begin the ARL program.

(b) Upon completion of the ARL program, the applicant shall earn a license area of concentration that is restricted to providing instruction in an online setting.

R277-503-5. Alternative Routes to Licensure (ARL).

(1) To be eligible to begin the ARL program, an applicant for a school position requiring an elementary license area of concentration shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas provided under R277-700-4.

(2) To be eligible to begin the ARL program, an applicant for a school position requiring a secondary license area of concentration shall hold at least a bachelors degree and:

(a) a degree major or major equivalent directly related to the assignment; or

(b) have completed all Board-designated content coursework required for the relevant endorsement.

(3) To be eligible to begin the ARL program, an applicant for a CTE school position who does not meet the requirements in R277-503-4(2) shall meet the requirements for a CTE license area of concentration as provided in R277-518.

(4) To be eligible for acceptance in the ARL program, an applicant shall be employed in a position at a Utah public or accredited private school where the applicant:

(a) receives a teaching assignment where the applicant has primary instruction responsibility for the assigned students;

(b) is designated the teacher of record for assigned courses for all school accountability and educator evaluation purposes;

(c) is responsible for the instructional planning of the courses including developing, adapting, and implementing the curriculum to meet student needs;

(d) analyzes and assesses student progress and adjusts instruction, materials, and delivery strategies to meet the students' needs;

(e) has final responsibility for determining student grades and credit for the courses taught by the applicant;

(f) is assigned in:

(i) a 7-12 secondary setting and employed at least 0.5 FTE in the applicant's eligible content areas; or

(ii) a K-6 elementary setting and employed at least 0.5 FTE and is responsible to teach language arts and reading, mathematics, science, and social studies or is employed in a state-sponsored dual immersion program; and

(g) shall be formally evaluated twice each school year consistent with R277-531, Public Educator Evaluation Requirements (PEER).

R277-503-6. Licensing by Agreement.

(1) An individual employed by an LEA shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the LEA.

(2) An applicant shall obtain an ARL application for licensing from the Board's web site.

(3) After evaluation of a candidate's transcripts and Board-designated content test score, the ARL advisors and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

(4) The ARL advisors may identify higher education courses, district sponsored coursework, Board-approved professional development, or Board-approved competency tests to prepare or indicate content, content-specific, and developmentally-appropriate pedagogical knowledge required for licensing.

(5) An applicant who has been employed as an educator under a competency-based license or as a full-time instructional paraeducator may offer that experience in lieu of one or more

pedagogy courses as follows:

(a) The applicant has had at least three years of experience as an educator or paraeducator;

(b) The applicant's experience has been successful based on documentation from the LEA; and

(c) The Superintendent and employing LEA have approved the applicant's experience in lieu of pedagogy courses.

(6) An employing LEA shall assign a trained mentor to work with an applicant for licensing by agreement.

(7)(a) An LEA shall supervise and assess a license applicant's classroom performance for a minimum of one school year if the applicant teaches full-time or a minimum of two school years if the applicant teaches part-time.

(b) An LEA may request assistance from an institution of higher education or the ARL advisors in monitoring and assessing an applicant.

(8)(a) An LEA shall assess a license applicant's disposition as a teacher following a minimum of one school year full-time teaching experience.

(b) An LEA may request assistance in assessment under Subsection (8)(a).

(9) The ARL advisors shall annually review and evaluate a license applicant following training, assessments or course work, and the full-time teaching experience and evaluation by the LEA.

(10) Consistent with evidence and documentation received, the ARL advisors may recommend a license applicant to the Board for a Level 1 educator license.

R277-503-7. Licensing by Competency.

(1) An LEA may employ an individual as a teacher if the individual:

(a) has appropriate skills, training, or ability for an identified licensed teaching position in the LEA; and

(b) satisfies the minimum requirements of Section R277-503-3.

(2)(a) An employing LEA, in consultation with the applicant and the ARL advisors, shall identify Board-approved content knowledge and pedagogical knowledge examinations.

(b) The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.

(3) An employing LEA shall assign a trained mentor to work with an applicant for licensing by competency.

(4) An LEA shall monitor and assess a license applicant's classroom performance during a minimum of one-year full-time or two-years part-time teaching experience.

(5) An LEA shall assess a license applicant's disposition for teaching following a minimum of one-year full-time teaching experience.

(6) An LEA may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.

(7) Following the one-year training period, an LEA and the Superintendent shall verify all aspects of preparation including content knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching to the ARL advisors.

(8) If all evidence/documentation is complete and satisfactory, the Superintendent shall recommend an applicant for a Level 1 educator license.

(9) An ARL candidate under Section R277-503-5 shall be issued an ARL license or license area as appropriate that is presumed to expire at the end of the school year.

(10) An ARL license may be extended annually for two subsequent school years with the following documentation of progress in the ARL program:

(a) a copy of the supervisor's successful end-of-year evaluation;

(b) copies of transcripts and test results, or both, showing completion of required coursework;

(c) verification of working with a trained mentor; and

(d) satisfaction of the full-time full year experience.

R277-503-8. LEA Specific Competency-Based Licenses.

(1)(a) An LEA may apply to the Board for a Level 1 competency-based license for an applicant to fill a position in the LEA.

(b) The application shall demonstrate that other licensing routes for the applicant are untenable or unreasonable.

(2) An employing LEA shall request a Level 1 competency-based license no later than 60 days after the date of the individual's first day of employment.

(3) An application for a Level 1 competency-based license from the LEA for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b)(i) for a K-6 grade teacher, the satisfactory results of the state test including subject knowledge and teaching skills in the required core academic subjects under Subsection 53A-6-104.5(3)(ii) as approved by the Board; or

(ii) for a teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by passing the state core academic subject test required under Subsection R277-503-3(4), in each of the core academic subjects in which the teacher teaches at the Superintendent-established passing score.

(4) An application for a Level 1 competency-based license from an LEA for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the LEA.

(5) Following receipt of documentation and consistent with Subsection 53A-6-104.5(2), the Superintendent shall approve a Level 1 competency-based license.

(6) If an individual with a Level 1 competency-based license leaves the LEA before the end of the employment period, the LEA shall notify the Superintendent regarding the end-of-employment date.

(7) An individual's Level 1 competency-based license shall be valid only in the LEA that originally requested the competency-based license.

(8) A written copy of a Level 1 competency-based license shall prominently state the name of the LEA followed by LEVEL 1 - LEA SPECIFIC - COMPETENCY-BASED LICENSE.

(9)(a) An LEA may change the assignment of a competency-based license holder and provide notice to the Superintendent;

(b) The Superintendent may require additional competency-based documentation for the teacher to remain qualified.

(10) A Level 1 competency-based license is equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations, and subject to the same renewal procedures except that an individual may renew a Level 1 competency-based license.

(11) A Level 2 competency-based license may be issued to a Level 1 competency-based license holder if that individual successfully completes the Entry years Enhancement program as detailed in R277-522.

(12) A Level 2 competency-based license is equivalent to the Level 2 license as described in R277-500 and R277-502 as to length and professional development expectations.

(13) A Level 3 competency-based license may be issued to a Level 2 competency-based license holder if that individual

holds a doctorate in education or in a field related to a content unit of the public education system from an accredited institution.

(14) A Level 3 competency-based license is equivalent to the Level 3 license as described in R277-500 and R277-502 as to length and professional development expectations.

(15) If an individual holds a Utah license, an application for an LEA specific competency-based license shall be subject to additional Superintendent review based upon the following criteria:

(a) license level;

(b) current license status;

(c) area of concentration and endorsements on Utah license; and

(d) circumstances justifying the LEA specific license.

(16)(a) If an application is not approved based on the Superintendent's review of the criteria provided in Section R277-503-4, appropriate licensure procedures shall be recommended to the requesting LEA.

(b) An applicant may be required to:

(i) renew an expired license;

(ii) apply for an endorsement;

(iii) pass appropriate Board approved tests consistent with Subsection R277-503-3(4);

(iv) obtain an additional area of concentration;

(v) apply to Alternative Route to Licensure; or

(vi) satisfy other reasonable standards.

R277-503-9. Endorsement Routes.

(1)(a) An applicant shall successfully complete one of the following programs for an endorsement:

(i) a Board-approved institution of higher education educator preparation program with endorsements;

(ii) assessment, approval, and recommendation by a designated and subject-appropriate Board specialist; or

(iii) a Board-approved Utah institution of higher education or Utah LEA-sponsored endorsement program that includes content knowledge and content-specific pedagogical knowledge approved by the Superintendent.

(b)(i) The Superintendent shall be responsible for final recommendation and approval for programs described in Subsections (1)(a)(i) and (ii).

(ii) A university or LEA shall be responsible for final review and recommendation of programs described in Subsection (1)(a)(iii), and the Superintendent shall be responsible for final approval.

(2)(a) A restricted endorsement shall be available and limited to teachers in necessarily existent small schools as determined under R277-445.

(b) Teacher qualifications shall include at least nine semester hours of Superintendent-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

(3) All provisions that directly affect the health and safety of students required for endorsements, such as prerequisites for drivers education teachers or coaches, shall apply to applicants seeking endorsements through all routes under this rule.

(4) Prior to an individual taking courses, exams or seeking a recommendation in the ARL licensing program, the individual shall have LEA and Superintendent authorization.

KEY: teachers, alternative licensing
January 10, 2017 Art X Sec 3
Notice of Continuation November 15, 2016 53A-1-402(1)(a)
53A-1-401

R277. Education, Administration.
R277-507. Driver Education Endorsement.
R277-507-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53A-1-402(1)(a), which directs the Board to make rules regarding the certification of educators;

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(d) Section 53A-13-208, which directs the Board to establish procedures and standards to certify teachers of driver education classes as driver license examiners.

(2) The purpose of this rule is to establish standards and procedures for secondary teachers to qualify for a driver education endorsement.

R277-507-2. Definitions.

(1) "Driver License Division" or "DLD" means the Driver License Division of the Department of Public Safety.

(2) "Endorsement" means a stipulation appended to a license setting forth the areas of practice to which the license applies.

(3) "Level 1 License" means a license issued:

(a) upon completion of an approved educator preparation program;

(b) upon completion of an alternative preparation program;

(c) pursuant to an agreement under the NASDTEC Interstate Contract to candidates who have also met all ancillary requirements established by law or rule; or

(d) in accordance with the requirements of Rule R277-511.

(4) "Level 2 License" means a license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.

(5) "Level 3 License" means a license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.

(6) "NASDTEC Interstate Contract" means the contract implementing Title 53A, Chapter 6, Part 2, Compact for Interstate Qualification of Educational Personnel, which is administered through the National Association of State Directors of Teacher Education and Certification, and which provides for reciprocity of educator licenses among states.

(7)(a) "Utah Driver Handbook" means a manual, prepared and periodically updated by the DLD, containing the rules which should be followed when operating a motor vehicle in Utah.

(b) The updated Utah Driver Handbook is available at http://dld.utah.gov/handbooksprintableforms/.

R277-507-3. Endorsement Requirements.

(1) A driver education endorsement shall be added to an educator's Level 1, 2, or 3 license if the educator:

(a) has a valid and current Level 1, 2, or 3 license with an area of concentration in one or more of the following:

(i) Secondary Education;

(ii) Special Education; or

(iii) School Counselor;

(b) has a valid Utah automobile operator's license;

(c) has not had an automobile operator's license suspended or revoked during the two year period immediately prior to applying for the endorsement; and

(d) has completed the professional preparation requirements set forth in Subsection (2).

(2) A high school driver education teacher shall complete professional preparation which includes sixteen (16) semester hours in the area of driver and safety education, as follows;

(a) a minimum of twelve (12) semester hours shall be in the area of driver and safety education, including a practicum covering classroom, on-street, simulator, and driving range instruction;

(b) a minimum of two (2) semester hours of Driver Education State Law and Policy through Utah Education Network;

(c) a minimum of one (1) semester hour of current/valid first aid and CPR training; and

(d) a minimum of one (1) semester hour of DLD online examiners training.

(3) In order for a high school driver education teacher to be certified as a driver license examiner by the DLD, the teacher shall first be licensed and endorsed as provided in this Section R277-507-3 by the Board.

(4) After meeting the criteria of Subsection (1), a high school driver education teacher shall obtain a valid and current certificate from the DLD to administer written and driving tests, in accordance with Section 53A-13-208.

R277-507-4. Driver Education Program Standards.

A teacher preparation program of an institution may be approved by the Board if it requires demonstrated competency by the teacher in:

(1) structuring, implementing, identifying and developing support materials related to:

(a) regular classroom instruction;

(b) multimedia instruction;

(c) driving simulation;

(d) off-street multiple car driving range experiences; and

(e) on-street driving experiences;

(2) assisting students in examining and clarifying their attitudes and values about safety;

(3) understanding and explaining the basic principles of motor vehicle systems, dynamics, and maintenance;

(4) understanding and explaining the interaction of all highway transportation system elements;

(5) initiating emergency procedures under varying circumstances;

(6) motor vehicle operation and on-street instruction;

(7) understanding and explaining the physiological and psychological influences of alcohol and other drugs especially as they relate to driving;

(8) understanding and explaining seat belt safety;

(9) understanding and explaining the consequences of distracted driving;

(10) understanding and explaining due process in the legal system;

(11) communicating effectively with federal, state, and local agencies concerning safety issues;

(12) understanding and explaining the frequency, severity, nature and prevention of accidents related to driving which occur in various age groups in various life activities; and

(13) understanding and explaining the Utah Driver Handbook.

R277-507-5. Endorsement Suspension.

(1) A driver education endorsement shall be immediately suspended and the previously-endorsed individual may not be allowed to teach driver education following the suspension or revocation of the individual's automobile operator's license.

(2) Once an individual's endorsement to teach has been suspended, the individual shall maintain a driving record free of convictions for moving violations or chargeable accidents for a period of two years before the endorsement to teach may be reinstated.

KEY: professional education, driver education, educator licensure
January 10, 2017 **Art X Sec 3**
Notice of Continuation November 15, 2016 **53A-1-402(1)(a)**
53A-1-401(3)
53A-13-208

R277. Education, Administration.
R277-512. Online Licensure.
R277-512-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53A-1-402(1)(a), which directs the Board to make rules regarding the certification of educators; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide procedures to ensure that consistency, quality, and fairness are maintained for online license transaction processes.

R277-512-2. Definitions.

(1)(a) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on licenses and license applications, which may include:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history;

(e) professional development information; and

(f) a record of disciplinary action taken by the Board against the educator.

(b) Information contained in an individual's CACTUS file may only be released in accordance with Title 63G, Chapter 2, Government Records Access Management Act.

(2) "LEA," for purposes of this rule, includes the Utah Schools for the Deaf and Blind.

(3) "License," for purposes of this rule, means an authorization issued by the Board which permits the holder to serve in a professional capacity in the public schools consistent with Section 53A-6-103.

(4) "License record" means the electronic record of license holder and license applicant personal information and credentials maintained by the Superintendent on the CACTUS database.

(5) "License transaction" means the interactions between a license holder or applicant and the Superintendent that result in issuance of:

(a) a license;

(b) a renewal of a license; or

(c) a modification of a license or license record.

(6) "Online license transaction" means those license transactions that take place via the process maintained by a contracted provider, chosen by the Superintendent.

(7) "Utah Professional Practices Advisory Commission" or "UPPAC" means a Commission established to assist and advise the Board in matters relating to the professional practices of educators, consistent with Title 53A, Chapter 6, Part 3, Utah Professional Practices Advisory Commission.

R277-512-3. Procedures.

(1) All current Board rules, statutory and Board definitions, and requirements established by statute and Board rules shall apply to all license transactions, regardless of whether the transactions occur online or by other means.

(2)(a) Educators may receive an electronic or paper verification of a licensure transaction.

(b) A verification provided under Subsection (2)(a) is not an educator license.

(3) CACTUS shall be the final repository of educator information and credentials for LEAs and other authorized CACTUS users.

(4) Timelines, electronic processes and procedures, payment procedures, formats, and other elements of online licensure transactions shall meet standards of quality, ease of use, and accessibility consistent with those generally found in other wide-spread online processes.

(5) The Superintendent shall conduct educator licensing transactions electronically.

(6) Approved Utah educator preparation institutions, LEAs, and other CACTUS users shall cooperate with the Superintendent by using the online tools and procedures provided by the Superintendent for transmission of information related to licensing.

R277-512-4. Audits.

(1) The Superintendent shall establish an auditing program that provides for review of online licensure transactions for:

(a) accuracy;

(b) reliability; and

(c) completeness.

(2) The Superintendent may subject any licensure transaction to audit:

(a) within one year without cause; or

(b) at any time with cause.

(3) An LEA may designate individuals, subject to approval by the Superintendent, to have the opportunity to access and review licenses acquired or renewed online to verify licensure of employees.

(4)(a) An audit conducted under Subsection (2) may include a review of license holder documentation to verify the statements made by the license holder as part of the online license transaction.

(b) In order to verify that the assertions made by a license holder were accurate, a license holder may be required to submit:

(i) transcripts;

(ii) records of participation in professional development activities;

(iii) supervisor letters or endorsements; and

(iv) other documentation requested by the Superintendent.

(5) If an audit finds that a license applicant or license holder intentionally provided false, misleading, or otherwise inaccurate information in a license transaction, the audit findings shall be forwarded to UPPAC.

(6) A license transaction that was completed on the basis of inaccurate information may be voided at any time with notice to the license holder.

R277-512-5. License Applicant and License Holder Responsibilities.

(1) A license applicant or license holder shall supply accurate and complete information in all license transactions.

(2) A license applicant or license holder shall maintain files and documentation of the information provided in a license transaction for a period of one year after the completion of the license transaction.

(3) A license applicant or license holder that supplies inaccurate, misleading, false, or otherwise unreliable information in any license transaction shall be subject to the full range of disciplinary actions that may be applied by UPPAC and the Board.

R277-512-6. Licensing Costs.

(1) The licensing process shall be automated and self-sustaining.

(2) The Superintendent shall incorporate current and emerging electronic and information technologies to better meet the needs of applicants for new licenses, for current license holders, for recommending institutions, for LEAs and the general public.

(3) The Superintendent shall determine and assess

licensing fees to license applicants that cover the actual and complete costs of licensing.

(4) The Board's Licensing Section shall maintain accurate records and documentation of:

(a) fees assessed;

(b) costs of online licensing; and

(c) any Superintendent review responsibilities.

R277-512-7. Licensing Records.

(1) The Superintendent shall record documentation of online licensure transactions in CACTUS.

(2)(a) License applicants shall be required to submit a social security number in order to be licensed.

(b) A license applicant's social security number shall be classified as private in accordance with Subsection 62G-2-302(2)(d).

(3) A license applicant or license holder shall update personal CACTUS information in a timely manner.

(4) CACTUS records may be used by the Superintendent for research and other valid educational purposes.

(5) The following records shall be classified as public pursuant to Title 63G, Chapter 2, Government Records Access and Management Act:

(a) licenses issued by the Board;

(b) endorsements on an educator's license;

(c) an educator's current assignment;

(d) an educator's assignment history in Utah public schools;

(e) an educator's education background; and

(f) Board disciplinary action against an educator's license, which resulted in:

(i) letter of reprimand;

(ii) suspension;

(iii) revocation; or

(iv) reinstatement.

(6) The Superintendent shall provide an online licensing database where the general public may access the information classified as public in Subsection (5).

KEY: online, licensure
January 10, 2017 Art X Sec 3
Notice of Continuation November 15, 2016 53A-1-402(1)(a)
53A-1-401

R277. Education, Administration.
R277-517. LEA Codes of Conduct.
R277-517-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to require LEAs to create a code of conduct applicable to the LEA's staff.

R277-517-2. Definitions.

(1) "Boundary violation" means the same as that term is defined in R277-515.

(2) "Staff" or "staff member" means an employee, contractor, or volunteer with unsupervised access to students.

R277-517-3. Required Code of Conduct.

(1) Each LEA shall adopt a code of conduct applicable to the LEA's staff.

(2) A code of conduct, adopted pursuant to Subsection (1), shall include, at a minimum:

(a) a statement that a staff member should avoid boundary violations, as defined in Rule R277-515, with students;

(b) a statement that a staff member may not subject a student to:

(i) physical abuse;

(ii) verbal abuse;

(iii) sexual abuse; or

(iv) mental abuse;

(c) a statement that a staff member shall report any suspected incidents of:

(i) physical abuse;

(ii) verbal abuse;

(iii) sexual abuse;

(iv) mental abuse; or

(v) neglect;

(d) a statement that a staff member may not touch a student in a way that makes a reasonably objective student feel uncomfortable;

(e) a statement regarding appropriate verbal or electronic communication between a staff member and a student;

(f) a statement regarding providing gifts, special favors, or preferential treatment to a student or group of students;

(g) a statement that a staff member shall not discriminate against a student on the basis of sex, race, religion, or any other prohibited class;

(h) a statement regarding appropriate use of electronic devices and social media for communication between a staff member and a student;

(i) a statement regarding use of alcohol, tobacco, and illegal substances during work hours and on school property;

(j) a statement that a staff member is required to:

(i) report any suspicion of child abuse or bullying to the proper authorities;

(ii) annually read and sign all policies related to identifying, documenting, and reporting child abuse; and

(iii) for an employee or contractor, annually attend abuse prevention training required in Section 53A-13-112; and

(3) An LEA shall post a code of conduct adopted pursuant to Subsection (1) on the LEA's website.

(4) An LEA shall provide information to staff that they should report and how to report:

(a) known violations of the LEA's code of conduct; and

(b) known violations of the Utah Educator Standards contained in R277-515.

KEY: codes of conduct
January 10, 2017 **Art X Sec 3**
53A-1-401

R277. Education, Administration.
R277-531. Public Educator Evaluation Requirements (PEER).
R277-531-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Subsections 53A-1-402(1)(a)(i) and (ii), which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services; and

(d) Section 53A-8a-301, which directs that the Board adopt rules to guide school district employee evaluations.

(2) The purpose of this rule is to provide a statewide educator evaluation system framework that includes required Board directed expectations and components and additional school district determined components and procedures to ensure the availability of data about educator effectiveness.

(3) The process shall:

(a) focus on the improvement of high quality instruction and improved student achievement;

(b) include common data that can be aggregated and disaggregated to inform Board and school district decisions about retention, preparation, recruitment, and improved professional learning practices; and

(c) ensure school districts engage in a consistent process statewide of educator evaluation.

R277-531-2. Definitions.

(1) "Educator" means an individual licensed under Section 53A-6-103 and who meets the requirements of Rule R277-502.

(2) "Educator Evaluation Program" means a school district's process, policies, and procedures for evaluating an educator's performance according to the educator's various assignments.

(3) "Formative evaluation" means an evaluation that provides an educator with information and assessments on how to improve the educator's performance.

(4) "Instructional quality data" means data acquired through observation of an educator's instructional practices.

(5) "Joint educator evaluation committee" means the local committee described under Section 53A-8a-403 that develops and assesses a school district evaluation program.

(6) "School administrator" means an educator:

(a) serving in a position that requires a Utah Educator License with an Administrative area of concentration; and

(b) who supervises Level 2 educators.

(7) "Summative evaluation" means an evaluation that is used to make annual decisions or ratings of an educator's performance and may inform decisions on salary, confirmed employment, personnel assignments, transfers, or dismissals.

(9) "Utah Effective Educator Standards" means:

(a) the Effective Teaching Standards established in Section R277-530-5;

(b) the Educational Leadership Standards established in Section R277-530-6; and

(c) the Educational School Counselor Standards established in Section R277-530-7.

(10) "Valid and reliable measurement tool" means an instrument that has proved consistent over time and uses non-subjective criteria that require minimal interpretation.

R277-531-3. Public Educator Evaluation Framework.

(1) The Board provides the public education evaluation framework described in this section, which includes general evaluation system areas and additional discretionary components required in a school district's educator evaluation system.

(2) A school district shall:

(a) have a joint educator evaluation committee;

(b) base the school district's educator evaluation system on the Utah Effective Educator Standards in Rule R277-530;

(c) establish and articulate performance expectations individually for all licensed school district educators;

(d) use valid and reliable measurement tools including, at a minimum:

(i) observations of instructional quality;

(ii) evidence of student growth;

(iii) parent and student input; and

(iv) other indicators as determined by the school district;

(e) provide an annual rating of educator performance using uniform statewide terminology and definitions, and include summative and formative components;

(f) direct the revision or alignment of all related school district policies, as necessary, to be consistent with the school district Educator Evaluation System;

(g) use valid, reliable, and research-based measurements that shall:

(i) employ a variety of measurement tools;

(ii) measure student growth for educators;

(iii) provide evaluation for non-instructional licensed educators and administrators; and

(h) provide both formative and summative evaluation data.

(3) A school district may consider data gathered from tools to inform decisions about employment and professional learning.

(4) A school district shall discuss and protect the confidentiality of educator data in the evaluation process.

(5)(a) A school district evaluation system shall provide for clear and timely notice to educators of the components, timelines, and consequences of the evaluation process; and

(b) A school district evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in Rule R277-500 and evaluation conferences.

(6) A school district evaluation system shall provide support for instructional improvement, including:

(a) assessing the professional learning needs of educators; and

(b) identifying educators who do not meet expectations for instructional quality and providing support as appropriate at the school district level, which may include providing educators with mentors, coaches, and specialists in effective instruction, and setting timelines and benchmarks to assist educators toward greater improved instructional effectiveness and student achievement.

(7) A school district evaluation system shall maintain records and documentation of required educator evaluation information.

(8) A school district evaluation system shall require the evaluation of all licensed educators at least once a year in accordance with Section R277-533.

(9) A school district evaluation system shall provide at least an annual rating for each licensed educator, including teachers, school administrators, and other non-teaching licensed positions, using Board-directed statewide evaluation terminology and definitions.

(10) A school district evaluation system shall provide for the evaluation of all provisional educators, as defined by the school district under Section 53A-8a-405, at least twice yearly.

(11) A school district evaluation system shall include the following specific educator performance criteria:

(a) school district-determined instructional quality measures;

(b) complete integration of student growth score; and

(c) other measures as determined by the school district, including data required from student/parent input.

(12) A school district evaluation system shall identify potential employment consequences, including discipline and termination, if an educator fails to meet performance expectations.

(13) A school district evaluation system shall include a review or appeals procedure for an educator to challenge the process of a summative evaluation that provides for adequate and timely due process for the educator consistent with Section 53A-8a-406(2).

(14) A school district may include additional components in its evaluation system.

(15) A local board of education shall review and approve its school district's proposed evaluation systems in an open meeting prior to the local board's submission to the Board.

(16) A school district shall report educator effectiveness data to the Superintendent annually, on or before June 30.

R277-531-4. Board Support and Monitoring of LEA Evaluation Systems.

The Superintendent, under supervision of the Board, shall:

(1) develop a model educator evaluation system that includes performance expectations consistent with this rule;

(2) evaluate and recommend tools and measures for use by school districts as they develop and initiate their local educator evaluation systems; and

(3) monitor a school district's evaluation system.

R277-531-5. Compensation.

(1) A school district shall implement an employee compensation system, no later than the 2018-19 school year, that is aligned to the school district's educator evaluation system.

(2) An educator's annual advancement on an adopted salary schedule shall be based primarily upon an evaluation system that differentiates among four levels of performance as described in Section 53A-8a-405 and R277-533, unless the educator:

(a) is a provisional educator; or

(b) is in the first year of an assignment, including a new subject, grade level, or school.

KEY: educators, evaluations, requirements
January 10, 2017 Art X Sec 3
Notice of Continuation August 15, 2016 53A-1-402(1)(a)(i)
53A-1-401

R277. Education, Administration.
R277-533. District Educator Evaluation Systems.
R277-533-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Title 53A, Chapter 8a, Part 4, Educator Evaluations, which requires the Board to make rules to establish a framework for the evaluation of educators and set policies and procedures related to educator evaluations; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) specify the requirements for district Educator Evaluation Systems Policies;

(b) describe the required components of district Educator Evaluation Systems; and

(c) establish requirements for how the Annual Summative Educator Evaluation Rating is reported.

R277-533-2. Definitions.

(1) "Evaluator" means a person who is responsible for an educator's overall evaluation, including:

(a) professional performance;

(b) student growth;

(c) stakeholder input; and

(d) other indicators of professional improvement.

(2) "Rater" means a person who conducts an observation of an educator related to an educator's evaluation.

(3) "School district" includes the Utah Schools for the Deaf and the Blind.

(4) "System" means a school district's educator evaluation system.

R277-533-3. School District Educator Evaluation Systems.

(1) A local school board shall adopt a district educator evaluation system in consultation with a joint committee established by the local school board as described in Section 53A-8a-403.

(2) A district educator evaluation system shall:

(a) include the components required in Section 53A-8a-405;

(b) include the following four differentiated levels of performance:

(i) highly effective;

(ii) effective;

(iii) emerging/minimally effective; and

(iv) not effective;

(c) use multiple lines of evidence in evaluation, including:

(i) professional performance, as described in Section R277-533-4;

(ii) student growth, as described in Section R277-533-5;

(iii) stakeholder input, as described in Section R277-533-5; and

(iv) other indicators of professional improvement as required by the school district;

(d) require regular conferences between an educator and an evaluator;

(e) provide a process for an educator to contribute additional information to inform the educator's evaluation at several intervals throughout the process;

(f) measure an educator's professional performance when the educator is working in a professional capacity with students, parents, colleagues, or community members;

(g) provide a process for an educator to:

(i) analyze stakeholder input;

(ii) analyze data related to performance; and

(iii) develop appropriate responses to the information;

(h) provide a procedure to include an educator's response to stakeholder data in the rating calculation;

(i) include a process for an evaluator to give an educator specific, measurable, actionable, and written direction regarding an educator's needed improvement and recommended course of action;

(j) provide a process for an educator to request a review of the implementation of the educator's evaluation, as described in:

(i) Subsection 53A-8a-406(3); and

(ii) Section R277-533-8;

(k) include multiple observations as described in Section R277-533-4; and

(l) provide a description of the methods for gathering, using, and protecting educator data.

(3) To form the school district's system, a local school board may adopt:

(a) the Utah Model Educator Evaluator System established by the Board;

(b) an adapted system; or

(c) a school district-developed system, consistent with Rules R277-530, R277-531, and this rule.

(4) An educator is responsible for:

(a) improving the educator's performance, using resources offered by the school district; and

(b) demonstrating acceptable levels of improvement in any designated area of deficiency.

R277-533-4. Evaluators and Standards for Education Observations.

(1) A school district's system shall include observations.

(2) The school district shall use observation tools that:

(a) are aligned with the Utah Effective Educator Standards described in Rule R277-530 at the indicator level; and

(b) include multiple observations at appropriate intervals.

(3) A school district's evaluation system shall:

(a) include an orientation for all educators conducted by the principal or designee as required in Section 53A-8a-404;

(b) include multiple observation items;

(c) a final rating for each observation item described in Subsection (3)(b); and

(d) include an opportunity for an educator to contribute additional information to inform their rating at several intervals throughout the process.

(4) To ensure a valid evaluation system, a school district shall provide professional development opportunities to all raters and evaluators of licensed educators to:

(a) improve a rater or evaluator's abilities; and

(b) give the rater or evaluator an opportunity to demonstrate the rater's abilities to rate an educator in accordance with the Utah Effective Educator Standards described in Rule R277-530.

(5) A school district shall establish a school district rater reliability plan.

(6) A school district rater reliability plan shall:

(a) require school district to compare a rater's decisions to standardized ratings established by a committee of expert raters;

(b) require a school district to measure a rater's skills and reassess the rater's skills at appropriate intervals to maintain system quality;

(c) designate qualified raters as certified;

(d) assure that an educator is rated by a certified rater;

(e) require a school district to offer a rater opportunities to improve the rater's skills through instruction and practice; and

(f) maintain high standards of rater accuracy.

R277-533-5. Student Growth and Stakeholder Input.

(1) A school district shall ensure that a student growth measurement includes the following three required components:

(a) learning goals measuring long-term outcomes linked to the appropriate specific content knowledge and skills from the Utah Core Standards;

(b) assessments; and

(c) targets for incremental monitoring of student growth.

(2)(a) A school district's system shall include stakeholder input for educators, principals, and administrators, including annual input from students and parents.

(b) In addition to the stakeholder input described in Subsection (4)(a), stakeholder input for principals and other administrators shall include input from teachers and support professionals.

(3) A school district's system shall:

(a) allow an educator to have an opportunity to respond to stakeholder input; and

(b) consider an educator's response described in Subsection (5)(a) as part of the educator's final rating.

R277-533-6. Computing the Annual Summative Rating.

(1) A school district shall base an educator's component ratings on:

(a) actual observations of the educator's performance; and

(b) educator, evaluator, student growth, or other stakeholder data gathered, calculated, or observed that is aligned with standards and rubrics.

(2) A school district shall report summative scores annually for all educators using the following approved terminology for reporting:

(d) highly effective 3;

(c) effective 2;

(b) minimal/emerging effective 1; and

(a) not effective 0.

R277-533-7. Minimal or Emerging Effective Category.

If an evaluator rates an educator's performance within the minimal or emerging effective category, the rater shall:

(1) designate an educator as emerging effective if:

(a) the educator:

(i) holds a Level 1 educator license; or

(ii) is being served by the school district's Entry Years Enhancement (EYE) program described in Rule R277-522; or

(b) the educator:

(i) received a new or different teaching or leadership assignment within the last school year; or

(ii) is developing in that area; or

(2) designate an educator as minimally effective if the educator:

(a) holds a Level 2 educator license; and

(b) is teaching or leading in a familiar assignment.

R277-533-8. Evaluation Reviews.

(1) An educator who is not satisfied with a summative evaluation may request a review in writing of the summative evaluation within 15 calendar days after receiving the written summative evaluation.

(2) A school district shall conduct a review of an educator's summative evaluation:

(a) as described in this section; and

(b) the requirements of Section 53A-8a-406.

(3) A review described in Subsection (2) shall be conducted:

(a) by a certified rater:

(i) with experience evaluating educators; and

(ii) not employed by the school district; and

(b) in accordance with the Utah Effective Educator Standards described in Rule R277-530.

(4) A certified rater described in Subsection (3) shall:

(a) review:

(i) the school district's educator evaluation policies and procedures;

(ii) the evaluation process conducted for the educator;

(iii) the evaluation data from the professional performance, student growth, and stakeholder input components; and

(iv) an educator's written response, if submitted as described in Subsection 53A-8a-406(1)(b); and

(b) report the certified rater's findings, in writing, to the school district's superintendent for action.

(5) The school district shall determine if the initial educator evaluation was issued in accordance with:

(a) the school district's educator evaluation policies;

(b) the requirements of the performance standards;

(c) Title 53A, Chapter 8a, Public Education Human Resource Management Act;

(d) Rule R277-531; and

(e) this rule.

R277-533-9. Educator Evaluation Data.

A school district shall report to the Board annually on or before June 30 the information necessary for the Board to make the report required by Section 53A-8a-410.

KEY: educators, evaluations
January 10, 2017 **Art X, Sec 3**
53A-1-401

R277. Education, Administration.
R277-702. Procedures for the Utah High School Completion Diploma.
R277-702-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "GED Test" means the General Educational Development Test developed by the American Council on Education.

C. "Out-of-school youth" means an individual 16 to 19 years of age whose high school class has not graduated and who is no longer enrolled in a K-12 program of instruction.

D. Utah High School Completion Diploma" means a completion diploma issued by the Board and distributed by a GED Testing Center or GED Testing Service (GEDTS) as agents of the Board, to an individual who has passed all five subject modules of the GED Test at a Utah GED Testing Center based on Utah passing standards; measuring the major and lasting outcomes and concepts associated with a traditional four-year high school experience.

R277-702-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(b) which directs the Board to adopt rules regarding access to programs, competency levels and graduation requirements, 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 describe the standards and procedures for obtaining a Utah High School Completion Diploma.

R277-702-3. Administrative Procedures and Standards for Testing and Certification.

A. The Board contracts with the General Educational Testing Service of the American Council on Education to administer the GED Testing Program in the state. The Board may contract with educational institutions within the state to administer the tests and provide related testing services. The number and location of the institutions designated as testing centers is determined in a manner that ensures that the test is reasonably accessible to potential applicants. Testing centers shall meet the GED Testing Service requirements in the GED Examiner's Manual, available at all Board-approved GED Testing Centers and from the USOE.

B. Individuals desiring to take a GED Test shall follow GED Test registration procedures established by GEDTS and Pearson VUE as approved by the Board and be eligible to take the GED Test under R277-702-4.

C. Individuals desiring to obtain a Utah High School Completion Diploma shall obtain a standard score of at least 410 on each of the five test modules of the GED Test and obtain an overall average standard score of 450 on the five test modules combined.

D. The Board recognizes that a GED is only one type of equivalency diploma that could be offered or accepted by the Board.

R277-702-4. Eligibility for GED Testing.

A. GED testing is open to all individuals regardless of race, color, national origin, gender or disabilities and is open to all individuals regardless of Utah residency.

B. Admission to a GED Test requires the following:

(1) that the candidate be at least 16 years of age and is not enrolled in any Utah K-12 school that issues high school credits or diplomas or both;

(2) if the candidate is age 16, the candidate shall:

(a) as part of the GED testing registration process, complete a state of Utah GED Testing Application for 16-18 Year Old Non-Graduates available from public schools, public charter schools, private or residential special purpose schools:

(i) completed by the school district, charter school, private or residential special purpose school not associated with a school district, stating that the candidate is not enrolled in a school, and the candidate understands and accepts the consequences and educational choices associated with the withdrawal from a K-12 program of instruction, including the prohibition from returning to a K-12 program anywhere in Utah upon successful passing of all five modules of the GED Test; and

(ii) signed by the candidate's parent/guardian specifically stating that the candidate and parent/guardian understand and accept the consequences and educational choices associated with the candidate's decision to withdraw from a K-12 program of instruction, and authorizing the GED Test; or

(iii) signed by representatives from a Utah state-sponsored Adult Education District Program stating that the candidate demonstrates academic competencies to meet with success in passing the GED Test; and

(iv) a marriage certificate in lieu of the parent/guardian signature if the candidate is married.

(3) if the candidate is 17 or 18 years of age and the candidate's graduating class has not graduated, the GED testing candidate shall submit a state of Utah GED Testing Application for 16-18 Year Old Non-Graduates to a Utah state-sponsored Adult Education School District Program:

(a) completed by the school district, charter school, private or residential special purpose school not associated with a school district, stating the candidate is not enrolled in school; and

(b) signed by the candidate's parent/guardian authorizing the test; or

(c) a marriage certificate in lieu of the parent/guardian signature if the candidate is married.

C. An out-of-school youth of school age who has not successfully passed all five GED Test modules shall be allowed to return to a school district, charter school, private or special purpose school not associated with a school district prior to the time his class graduates with the understanding and expectation that all necessary requirements for the traditional K-12 diploma shall be completed for a regular high school diploma.

D. An out-of-school youth of school age who has received a Utah High School completion Diploma is not eligible to return to a K-12 high school unless it is required for provision of a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C., Chapter 33

E. An out-of-school youth of school age who has successfully passed all five GED Test modules and received a Utah High School Completion Diploma shall be reported as a graduate for K-12 graduation Annual Yearly Progress outcomes.

F. Individuals, as required by an employer or higher education to provide academic competency, who cannot offer proof of high school completion may, upon approval of the USOE GED Testing Administrator, take the GED Test.

G. Individuals who have previously passed GED Test modules but seek higher GED Test scores for specific post-secondary institution admission may seek permission to retake the GED Test module(s) from the USOE GED Testing Administrator.

R277-702-5. Fees.

A. The Board, or its designee, shall adopt uniform fees for the General Educational Development Certificate and uniform forms, deadlines, and accounting procedures to administer this program as defined by GED Testing Service and Pearson VUE.

B. A GED Testing Center, after consultation with the Board or its designee, shall adopt fees and forms for GED testing as defined by GED Testing Service and Pearson VUE.

R277-702-6. Official Transcripts.

Test scores shall be accepted by the Board when original scores are reported by:

A. Board-approved GED Testing Centers;

B. Transcript service of the Defense Activity for Non-Traditional Educational Support (DANTES);

C. Veterans Administration hospitals and centers; or

D. GED Testing Service or authorized agents.

R277-702-7. Adult High School Outcomes.

A. A local board of education may adopt standards and procedures for awarding up to five (5) units of credit on the basis of test results which may be applied toward an Adult Education Secondary Diploma only if the student was enrolled in an Adult Education Program prior to July 1, 2009 and the GED was transcripted prior to July 1, 2009.

B. Individuals who have taken and passed the GED Tests prior to January 1, 2002 may enroll in an adult education program now and in the future to obtain an Adult Education Secondary Diploma upon completion of graduation requirements as defined in Rule 277-733 - Adult Education Programs, but may not apply for a previously issued GED Test Certificate to be converted to a Utah High School Completion Diploma.

C. Individuals who have taken and passed the GED Test in the state of Utah between the dates of January 1, 2002 and June 30, 2009 may apply after July 1, 2009 for a Utah High School Completion Diploma to replace the originally issued GED Test Certificate from the Board or they may enroll in an adult education program to complete the necessary requirements for an Adult Education Secondary Diploma.

R277-702-8. GED Testing Security.

A. Access to the GED Test shall be limited to the USOE Administrator of GED Testing; state authorized GED Examiners or Pearson VUE test facilitators; and during actual testing, those test candidates without high school diplomas or a GED credential. Any other access to the GED Test shall be cleared in writing through the USOE GED Testing Administrator.

B. All test facilitators shall conduct GED Test administration in strict accordance with the procedures and guidelines specified by the GED Testing Service and Pearson VUE, in the GED Test administration manual and Board rules.

C. Teachers, administrators, and school personnel shall not:

(1) provide students directly or indirectly with specific questions or answers from any official GED Test;

(2) allow students access to any testing material, in any form, prior to test administration; or

(3) knowingly and intentionally do anything that would inappropriately affect the security, validity, or reliability of GED Test scores of any individual student or group taking the GED Test.

D. Intentional violation of any of these rules by licensed educators may subject them to disciplinary action under Section 53A-6-501 or R277-515, Utah Educator Standards, or both.

KEY: adult education, educational testing, student competency
May 16, 2013 53A-1-402(1)(b)
Notice of Continuation Januar 17, 2017 53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan (SIP) must be incorporated by reference into these rules. Copies of the SIP are available on the division's website.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on March 8, 2006, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on December 2, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on January 5, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on November 3, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on January 3, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits and Operating Practices, as most recently amended by the Utah Air Quality Board on December 7, 2016, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Transportation Conformity Consultation.

The Utah State Implementation Plan, Section XII, Transportation Conformity Consultation, as most recently amended by the Utah Air Quality Board on May 2, 2007, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on December 2, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-36. Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County, as most recently adopted by the Utah Air Quality Board on November 6, 2013, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-37. Section XXIII, Interstate Transport.

The Utah State Implementation Plan, Section XXIII, Interstate Transport, as most recently adopted by the Utah Air Quality Board on February 7, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
December 8, 2016 19-2-104
Notice of Continuation January 27, 2017

R307. Environmental Quality, Air Quality.
R307-120. General Requirements: Tax Exemption for Air Pollution Control Equipment.
R307-120-1. Applicability.

This rule shall apply to purchases described in Section 19-12-201.

R307-120-2. Definitions.

The following definitions apply to R307-120:

"Freestanding pollution control property" means freestanding pollution control property as defined in Section 19-12-102.

"Pollution control facility" means pollution control facility as defined in Section 19-12-102.

R307-120-3. Application for Certification.

(1) An application for certification shall be made on the form provided by the director.

(2) The application shall include all information requested thereon and such additional information as is requested by the director. At a minimum, the application shall contain:

(a) a description of the pollution control facility or the freestanding pollution control property;

(b) a description of the property, part, product, or service for a purchase or lease of property, a part, a product or a service for which a person seeks to claim a sales and use tax exemption under Section 19-12-201;

(c) the existing or proposed operation procedure for the pollution control facility or freestanding pollution control property; and

(d) a statement of the purpose served or to be served by the pollution control facility or freestanding pollution control property.

(3) Applications for certification shall include:

(a) a reference to the approval order issued under R307-401-8 that requires the pollution control facility or the freestanding pollution control property; or

(b) a reference to the section of the State Implementation Plan that requires the pollution control facility or the freestanding pollution control property; or

(c) an estimate of emission reductions (in tons per year) resulting from the use of the pollution control facility or the freestanding pollution control property.

(4) The director may require an application to contain additional information that the director finds necessary to determine whether to grant certification under Section 19-12-303.

R307-120-4. Issuance of Certification.

(1) The filing date of the application shall be the date the director receives a complete application with all of the information as described in R307-120-3. Within 120 days of the filing date of the application, the director will:

(a) issue a written certification of the pollution control facility or the freestanding pollution control property; or

(b) provide a written statement of the reason for the denial of certification.

(2) The director shall issue a certification of a pollution control facility or a freestanding pollution control property to the applicant if the director determines that:

(a) the application meets the requirements of Section 19-12-301(3) or 19-12-302(2);

(b) the facility or property that is the subject of the application is a pollution control facility or a freestanding pollution control property.

(c) the person who files the application is a person described in Section 19-12-301(1) or 19-12-302(1); and

(d) the purchases or leases for which the person seeks to claim a sales and use tax exemption are exempt under Section 19-12-201.

(3) The director may issue one certification for one or more pollution control facilities or freestanding pollution control properties that constitute an operational unit.

(4) If the director does not issue or deny a certification within 120 days after the date a person files an application, the director shall issue a certification to the person at the person's request.

R307-120-5. Exemptions from Certification.

The director shall not issue a certification for the following:

(1) a replacement of freestanding pollution control property; or

(2) property, a part, a product, or a service described in Sections 19-12-201(1)(b) through (e) used or performed in a repair or replacement related to:

(a) a pollution control facility; or

(b) a freestanding pollution control property.

(3) a pollution control facility or a freestanding pollution control property that has already received a certification under R307-120-5.

R307-120-6. Appeal and Revocation.

(1) A decision of the director may be reviewed by filing a Request for Agency Action as provided in R305-7.

(2) The director may revoke a certification issued under Section 19-12-303 if the director makes a determination as contained in Section 19-12-304.

KEY: air pollution, tax exemptions, equipment

March 5, 2015	**19-12-101**
Notice of Continuation January 27, 2017	**19-12-102**
	19-12-201
	19-12-202
	19-12-203
	19-12-301
	19-12-302
	19-12-303
	19-12-304
	19-12-305

R307. Environmental Quality, Air Quality.
R307-130. General Penalty Policy.
R307-130-1. Scope.

This policy provides guidance to the director in negotiating with air pollution sources penalties for consent agreements to resolve non-compliance situations. It is designed to be used to determine a reasonable and appropriate penalty for the violations based on the nature and extent of the violations, consideration of the economic benefit to the sources of non-compliance, and adjustments for specific circumstances.

R307-130-2. Categories.

Violations are grouped in four general categories based on the potential for harm and the nature and extent of the violations. Penalty ranges for each category are listed.

(1) Category A. $7,000-10,000 per day:

Violations with high potential for impact on public health and the environment including:

(a) Violation of emission standards and limitations of NESHAP.

(b) Emissions contributing to nonattainment area or PSD increment exceedences.

(c) Emissions resulting in documented public health effects and/or environmental damage.

(2) Category B. $2,000-7,000 per day.

Violations of the Utah Air Conservation Act, applicable State and Federal regulations, and orders to include:

(a) Significant levels of emissions resulting from violations of emission limitations or other regulations which are not within Category A.

(b) Substantial non-compliance with monitoring requirements.

(c) Significant violations of approval orders, compliance orders, and consent agreements not within Category A.

(d) Significant and/or knowing violations of "notice of intent" and other notification requirements, including those of NESHAP.

(e) Violations of reporting requirements of NESHAP.

(3) Category C. Up to $2,000 per day.

Minor violations of the Utah Air Conservation Act, applicable State and Federal Regulations and orders having no significant public health or environmental impact to include:

(a) Reporting violations

(b) Minor violations of monitoring requirements, orders and agreements

(c) Minor violations of emission limitations or other regulatory requirements.

(4) Category D. Up to $299.00.

Violations of specific provisions of R307 which are considered minor to include:

(a) Violation of automobile emission standards and requirements

(b) Violation of wood-burning regulations by private individuals

(c) Open burning violations by private individuals.

R307-130-3. Adjustments.

The amount of the penalty within each category may be adjusted and/or suspended in part based upon the following factors:

(1) Good faith efforts to comply or lack of good faith. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State to include accessibility to information and the amount of State effort necessary to bring the source into compliance.

(2) Degree of wilfulness and/or negligence. In assessing wilfulness and/or negligence, factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, and whether the violator knew of the legal requirements which were violated.

(3) History of compliance or non-compliance. History of non-compliance includes consideration of previous violations and the resource costs to the State of past and current enforcement actions.

(4) Economic benefit of non-compliance. The amount of economic benefit to the source of non-compliance would be added to any penalty amount determined under this policy.

(5) Inability to pay. An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the source to pay.

R307-130-4. Options.

Consideration may be given to suspension of monetary penalties in trade-off for expenditures resulting in additional controls and/or emissions reductions beyond those required to meet existing requirements. Consideration may be given to an increased amount of suspended penalty as a deterrent to future violations where appropriate.

KEY: air pollution, penalty
July 13, 2007 19-2-104
Notice of Continuation January 27, 2017 19-2-115

R307. Environmental Quality, Air Quality.
R307-135. Enforcement Response Policy for Asbestos Hazard Emergency Response Act.
R307-135-1. AHERA Penalty Policy Definitions.

The following additional definitions apply to R307-135:

"AHERA" means the federal Asbestos Hazard Emergency Response Act of 1986 and 40 CFR Part 763, Subpart E, Asbestos-Containing Materials in Schools.

"Local Education Agency" means:

(1) any local education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381),

(2) the owner of any nonpublic, nonprofit elementary or secondary school building, or

(3) the governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

"Other Person" means any nonprofit school that does not own its own building, or any employee or designated person of a Local Education Agency who violates the AHERA regulations, or any person other than the Local Education Agency who:

(1) inspects the property of Local Education Agencies for asbestos-containing building materials for the purpose of the Local Education Agency's AHERA inspection requirements;

(2) prepares management plans for the purpose of the Local Education Agency's AHERA management plan requirements;

(3) designs or conducts response actions at Local Education Agency properties;

(4) analyzes bulk samples or air samples for the purpose of the compliance of the Local Education Agency with the AHERA requirements; or

(5) contracts with the Local Education Agency to perform any other AHERA-related function.

"Private Nonprofit School" means any nonpublic, nonprofit elementary or secondary school.

R307-135-2. Assessing Penalties Against a Local Education Agency.

(1) A Notice of Noncompliance may be issued to a Local Education Agency for a violation of AHERA. After a Notice of Noncompliance has been issued, the Local Education Agency must submit documentation to the director within 60 days demonstrating that the violations listed in the Notice of Noncompliance have been corrected. Failure to submit complete documentation within 60 days is a violation of this rule.

(2) A Notice of Violation may be issued to a Local Education Agency for:

(a) first-time level 1 or 2 violations as specified in R307-135-5,

(b) subsequent level 3, 4, 5, or 6 violations as specified in R307-135-5,

(c) failure to inspect and submit a management plan within 60 days of issuance of a Notice of Noncompliance,

(d) not conducting an inspection and/or submitting a plan by the statutory deadline after non-compliance has been verified by an authorized agent of the director.

(3) In accordance with Section 19-2-115, and with Section 207(a) of AHERA, the maximum penalty that may be assessed against a Local Education Agency for any and all violations in a single school building is $5,000 per day. Total penalties for a single school building which exceed $5,000 per day are to be reduced to $5,000 per day.

(4) Violations of AHERA by a Local Education Agency will be considered one-day violations, except that, in cases in which a Local Education Agency violates AHERA regulations after a Notice of Violation has been issued, additional penalties may be assessed on a per-day basis and injunctive relief may be sought.

(5) The director may use discretion in assessing penalties. The base penalty shall be determined by assessing the circumstances and the extent of the violation, as specified in R307-135-5.

(6) In determining adjustments to a base penalty assessed against a Local Education Agency in accordance with R307-135-5, the director may consider the culpability of the violator, including any history of non-compliance; ability to pay the penalty; ability to continue to provide educational services to the community; and the violator's good faith efforts to comply or lack of good faith.

(a) If it can be shown that the Local Education Agency did not know of its AHERA responsibilities, or if the violations are voluntarily disclosed by the Local Education Agency, or if the Local Education Agency did not have control over the violations, the penalty may be reduced by 25%.

(b) If violations are voluntarily disclosed by the Local Education Agency within 30 days of discovery, the penalty will be reduced by an additional 25%.

(c) If it can be shown that the Local Education Agency made reasonable efforts to assure compliance, the Notice of Violation may be eliminated.

(d) If the Local Education Agency has a demonstrated history of violations, the penalty may be increased.

(e) The attitude of the violator may be considered in increasing or decreasing the penalty by 15%.

(7) Civil penalties collected against a Local Education Agency shall be used by that Local Education Agency for the purposes of complying with AHERA. The director will defer payment of the penalty until the Local Education Agency has completed the requirements in the compliance schedule by the deadline in the schedule. When the compliance schedule expires, the Local Education Agency must present the director with a strict accounting of the cost of compliance in the form of notarized receipts, an independent accounting, or equivalent proof.

(8) If the cost of compliance equals or exceeds the amount of the civil penalty, the Local Education Agency will not be required to pay any money. If the cost of compliance is less than the amount of the penalty, the Local Education Agency shall pay the difference to the Asbestos Trust Fund.

R307-135-3. Assessing Penalties Against Other Persons.

(1) In accordance with Section 19-2-115, the director may assess and collect civil penalties of up to $10,000 per day for each violation from Other Persons who violate the AHERA regulations. The penalties will be issued against the company, if there is one. Generally penalties which exceed $10,000 per day in a single school building are to be reduced to $10,000 per day.

(2) Criminal penalties for willful violations of up to $25,000 may be assessed against Other Persons. All penalties assessed against Other Persons are to be sent to the Division for the State General Fund.

(3) The base penalty shall be determined by assessing the circumstances and the extent of the violation, as specified in R307-135-5.

(4) The director may show discretion in making adjustments to the gravity-based penalty considering factors such as culpability of the Other Person, including a history of such violations; the Other Person's ability to pay; the Other Person's ability to stay in business; and other matters as justice may require, such as voluntary disclosure and attitude of the violator.

(5) The maximum penalty that may be assessed is $10,000, per day, per violation, except that a knowing or willful violation

of the regulations may be assessed at $25,000, per day.

(6) If the Other Person continues to violate after a Notice of Violation has been issued, the Notice of Violation may be amended and additional penalties assessed. Injunctive relief, criminal penalties and per-day penalties may also be pursued.

(7) Penalties for a first-time violation may be remitted if the Other Person corrects the violations in all schools in which the Other Person has and may have violated. In some cases of unknowing violations by an Other Person who is not typically involved with asbestos, some or all of the penalty may be remitted if the Other Person takes mandatory AHERA training.

R307-135-4. Penalties Against Private Nonprofit Schools.

(1) The owner of the building that contains a private nonprofit elementary school is considered a Local Education Agency. If the private non-profit school does not own its own building, it is considered an Other Person and will be treated as such.

(2) The school is liable for up to $5,000, per day, per violation of AHERA, and penalties may be returned to the school for the purposes of complying with AHERA. The owner of the private nonprofit school building will be assessed penalties in the same manner as other Local Education Agencies.

R307-135-5. AHERA Enforcement Response Policy Penalties.

(1) Gravity Based Penalty. A base penalty based on the gravity of the violation will be determined by addressing the circumstances and the extent of the violation. Table 1 specifies penalties for Local Education agencies and Table 2 specifies penalties for Other Persons.

(2) Circumstances. The circumstances reflect the probability that harm will result from a particular violation. The probability of harm increases as the potential for environmental harm or asbestos exposure to school children and employees increases. Tables 1 and 2 provide the following levels for measuring circumstances:

(a) Levels 1 and 2 (High): It is probable that the violation will cause harm.

(b) Levels 3 and 4 (Medium): There is a significant chance the violation will cause harm.

(c) Levels 5 and 6 (Low): There is a small chance the violation will result in harm.

(3) The circumstance levels that are to be attached for each provision of AHERA may be found in Appendix A (Local Education Agency violations) and Appendix B (Other Person violations) of EPA's AHERA Enforcement Response Policy.

(4) Extent. The extent reflects the potential harm caused by a violation. Harm is determined by the quantity of asbestos-containing building materials involved in the violation through inspection, removal, enclosure, encapsulation, or repair in violation of the regulation.

(5) For the purposes of this Enforcement Response Policy, the extent levels are specified in Tables 1 and 2 and are as follows:

(a) Major: violations involving more than 3,000 square feet or 1,000 linear feet of ACBM.

(b) Significant: violations involving more than 160 square feet or 260 linear feet but less than or equal to 3,000 square feet or 1,000 linear feet.

(c) Minor: violations involving less than or equal to 160 square feet or 260 linear feet.

(6) In situations where the quantity of asbestos involved in the AHERA violation cannot be readily determined, the base penalty will generally be calculated using the major extent category.

TABLE 1

BASE PENALTY FOR LOCAL EDUCATION AGENCIES

CIRCUMSTANCES		EXTENT		
(Levels)		A MAJOR	B SIGNIFICANT	C MINOR
High Range	1	$5,000	$3,400	$1,000
	2	$4,000	$2,400	$ 600
Mid Range	3	$3,000	$2,000	$ 300*
	4	$2,000	$1,200	$ 200*
Low Range	5	$1,000	$ 600	$ 100*
	6	$ 400*	$ 260*	$ 40*

*Issue Notices of Noncompliance for the first citation of violations that fall within these cells if that is the only violation

TABLE 2

BASE PENALTY FOR OTHER PERSONS

CIRCUMSTANCES		EXTENT		
(Levels)		A MAJOR	B SIGNIFICANT	C MINOR
High Range	1	$10,000	$6,800	$2,000
	2	$ 8,000	$4,800	$1,200
Mid Range	3	$ 6,000	$4,000	$ 600
	4	$ 4,000	$2,800	$ 400
Low Range	5	$ 2,000	$1,200	$ 200
	6	$ 800	$ 520	$ 80

R307-135-6. Injunctive Relief.

(1) In accordance with Sections 19-2-116 and 117, the director may seek injunctive relief:

(a) in cases of imminent and substantial endangerment to human health and environment;

(b) where a Local Education Agency's non-compliance will significantly undermine the intent of the AHERA regulations; and

(c) for violations including, but not limited to:

(i) failure or refusal to make a management plan available to the public without cost or restriction;

(ii) failure or refusal to conduct legally sufficient air monitoring following a response action; or

(iii) the initiation of a response action without accredited personnel; or

(d) to restrain any violation of Title 19, Chapter 2 or R307 or any final order issued by the director when it appears to be necessary for the protection of health or welfare.

R307-135-7. Criminal Penalties.

In accordance with Section 19-2-115, knowing, willful, or continuing violations of AHERA regulation by a Local Education Agency, Local Education Agency employee, or Other Person will be referred to the Office of the Attorney General. Knowing, willful, or continuing violations may result in the issuance of a criminal penalty of $25,000 per day, per violation for such violations.

KEY: air pollution, hazardous pollutant, asbestos, schools
November 8, 2012 19-2-104(1)(d)
Notice of Continuation January 27, 2017 19-2-115
19-2-116
19-2-117

R307. Environmental Quality, Air Quality.
R307-301. Utah and Weber Counties: Oxygenated Gasoline Program As a Contingency Measure.
R307-301-1. Definitions.

The following additional definitions apply to R307-301.

"Averaging period" is the control period and means the period of time over which all gasoline sold or dispensed for use in a control area by any control area responsible party or blender control area responsible party must comply with the average oxygen content standard.

"Blender control area responsible party (blender CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending installation.

"Blending Allowance" means the amount of oxygen a gasoline blend is allowed above its upper oxygen content limit. Any gasoline blended under the provisions of 42 U.S.C. 7545(f)(1) addressing substantially similar fuels are permitted a blending allowance of 0.2% oxygen by weight. Blending allowances are not given to gasoline blends granted a waiver by the Administrator under 42 U.S.C. 7545(f)(4).

"Carrier" means any person who transports, stores or causes the transportation or storage of gasoline at any point in the gasoline distribution network, without taking title to or otherwise having ownership of the gasoline, and without altering the quality or quantity of the gasoline.

"Control area" means a geographic area in which only gasoline under the oxygenated gasoline program may be sold or dispensed during the control period.

"Control area oxygenate blending installation" means any installation or truck at which oxygenate is added to gasoline or gasoline blendstock which is intended for use in any control area, and at which the quality or quantity of the gasoline or gasoline blendstock is not otherwise altered, except through the addition of deposit-control additives.

"Control area responsible party (CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area terminal.

"Control area terminal" means either a terminal which is capable of receiving gasoline in bulk, i.e., by pipeline, marine vessel or barge, or a terminal at which gasoline is altered either in quantity or quality, excluding the addition of deposit control additives, or both. Gasoline which is intended for use in any control area is sold or dispensed into trucks at these control area terminals.

"Control period" means November 1 through the last day of February, during which time only oxygenated gasoline may be sold and dispensed in any control area.

"Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refiner's installation and any retail outlet or wholesale purchaser-consumer's installation. A distributor is a blender CAR if the distributor alters the oxygen content of gasoline intended for use in any control area through the addition of one or more oxygenates, or lowers its oxygen content below the minimum oxygen content specified in R307-301-6.

"Gasoline" means any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

"Gasoline blendstock" means a hydrocarbon material which by itself does not meet specifications for finished gasoline, but which can be blended with other components, including oxygenates, to produce a blended gasoline fully meeting the American Society for Testing and Materials (ASTM) or state specifications.

"Non-oxygenated gasoline" means any gasoline which does not meet the definition of oxygenated gasoline.

"Oxygen content of gasoline blends" means percentage of oxygen by weight contained in a gasoline blend, based upon the percent by volume of each type of oxygenate contained in the gasoline blend, excluding denaturants and other non-oxygen-containing compounds. All measurements shall be adjusted to 60 degrees Fahrenheit.

"Oxygenate" means any substance, which when added to gasoline, increases the amount of oxygen in that gasoline blend. Lawful use of any combination of these substances requires that they be substantially similar as provided for under 42 U.S.C. 7545(f)(1), or be permitted under a waiver granted by the Administrator of the Environmental Protection Agency under the authority of 42 U.S.C. 7545(f)(4).

"Oxygenate blender" means a person who owns, leases, operates, controls, or supervises a control area oxygenate blending installation.

"Oxygenated gasoline" means any gasoline which contains at least 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, that was produced through the addition of one or more oxygenates to a gasoline and has been included in the oxygenated gasoline program accounting by a control area responsible party or blender control area responsible party and which is intended to be sold or dispensed for use in any control area. Notwithstanding the foregoing, if the Board determines that the requirement of 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, will prevent or interfere with attainment of the PM_{10} National Ambient Air Quality Standard and the State requests and is granted a waiver from the Administrator of the Environmental Protection Agency under 42 U.S.C. 7545, the waiver amount granted by the Administrator of the Environmental Protection Agency shall apply. Oxygenated gasoline containing lead is required to conform to the same waiver conditions or substantially similar ruling as unleaded gasoline as described in the definition of oxygenate.

"Refiner" means any person who owns, leases, operates, controls, or supervises a refinery which produces gasoline for use in a control area during the applicable control period.

"Refinery" means a plant at which gasoline is produced.

"Reseller" means any person who purchases gasoline and resells or transfers it to a retailer or a wholesale purchaser-consumer.

"Retail outlet" means any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in motor vehicles.

"Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

"Terminal" means an installation at which gasoline is sold, or dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer installations.

"Trigger date" means the date on which is triggered the Contingency Action Level specified in Section IX.C.8.h or IX.C.6.e of the state implementation plan.

"Wholesale purchaser-consumer" means any organization that:

(1) is an ultimate consumer of gasoline;

(2) purchases or obtains gasoline from a supplier for use in motor vehicles; and

(3) receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

"Working day" means Monday through Friday, excluding observed federal and Utah state holidays.

R307-301-2. Applicability and Control Period Start Dates.

(1) Unless waived under authority of 42 U.S.C. 7545(m)(3) by the Administrator of the Environmental Protection Agency, R307-301 is applicable in Utah and Weber Counties.

(2) The first control period for areas for which R307-301 is applicable begins on November 1 following the trigger date

for the county in which it has been triggered.

R307-301-3. Average Oxygen Content Standard.

(1) All gasoline sold or dispensed during the control period, for use in each control area, by each CAR or blender CAR as defined in R307-301-1, shall be blended for each averaging period to contain an average oxygen content of not less than 2.7% oxygen by weight.

(2) The averaging period over which all gasoline sold or dispensed in the control area is to be averaged shall be equal to the control period.

(3) All gasoline, both leaded and unleaded, shall be blended in compliance with 40 CFR Part 79 (1991) - Registration of Fuels and Fuel Additives and 40 CFR Part 80 (1991) - Regulation of Fuels and Fuel Additives.

(4) Any gasoline blended under 42 U.S.C. 7545(f)(1) dealing with substantially similar fuels must be blended in compliance with the criteria specified in the substantially similar ruling. Any extra volume of oxygenate or oxygenates added to gasoline blended under a substantially similar ruling as provided for under 42 U.S.C. 7545(f)(1) in excess of the criteria specified in 42 U.S.C. 7545(f)(1) may not be included in the compliance calculations specified in R307-301-5(2) and (3).

(5) Any gasoline blended under a waiver granted by the Environmental Protection Agency under the provisions of 42 U.S.C. 7545(f)(4) must be blended in compliance with the criteria specified in the appropriate waiver. Gasoline blends waived to oxygen content above 2.7% oxygen by weight are not permitted a blending allowance for blending tolerance purposes. Any extra volume of oxygenate in excess of the criteria specified in the appropriate waiver may not be included in the compliance calculations specified in R307-301-5(2) or (3).

(6) Oxygen content shall be determined in accordance with R307-301-4.

R307-301-4. Sampling, Testing, and Oxygen Content Calculations.

(1) For the purpose of determining compliance with the requirements of R307-301, the oxygen content of gasoline shall be determined by one or both of the two following methods.

(a) Volumetric Method. Oxygen content may be calculated by the volumetric method specified in the Environmental Protection Agency Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended - Supplementary Information - Oxygen Content Conversions, published in the Federal Register on October 20, 1992.

(b) Chemical Analysis Method.

(i) Use the sampling methodologies detailed in 40 CFR Part 80 (1993), Appendix D, to obtain a representative sample of the gasoline to be tested;

(ii) Determine the oxygenate content of the sample by use of:

(A) the test method specified in ASTM Designation D4815-93, Testing Procedures--Method--ASTM Standard Test Method for Determination of C1 to C4 Alcohols and MTBE in Gasoline by Gas Chromatography,

(B) the test method specified in Appendix C of Environmental Protection Agency Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended - Test Procedure Test for the Determination of Oxygenates in Gasoline as published in the Federal Register on October 20, 1992, or

(C) an alternative test method approved by the director.

(iii). Calculate the oxygen content of the gasoline sampled by multiplying the mass concentration of each oxygenate in the gasoline sampled by the oxygen molecular weight contribution of the oxygenate set forth in (3) below.

(2) All volume measurements required in R307-301-4 shall be adjusted to 60 degrees Fahrenheit.

(3) For the purposes of R307-301, the oxygen molecular weight contributions and specific gravities of oxygenates currently approved for use in the United States by the U.S. Environmental Protection Agency are the following:

TABLE

Specific Gravity and Weight Percent Oxygen of Common Oxygenates

oxygenate	weight fraction oxygen	specific gravity at 60 degrees F
ethyl alcohol	0.3473	0.7939
normal propyl alcohol	0.2662	0.8080
isopropyl alcohol	0.2662	0.7899
normal butyl alcohol	0.2158	0.8137
isobutyl alcohol	0.2158	0.8058
secondary butyl alcohol	0.2158	0.8114
tertiary butyl alcohol	0.2158	0.7922
methyl tertiary-butyl ether (MTBE)	0.1815	0.7460
tertiary amyl methyl ether (TAME)	0.1566	0.7752
ethyl tertiary-butyl ether (ETBE)	0.1566	0.7452

(4) Sampling, testing, and oxygen content calculation records shall be maintained for not less than two years after the end of each control period for which the information is required.

(5) Every refiner must determine the oxygen content of all gasoline produced for use in a control area by use of the methodology specified in (1) above. Documentation shall include the percent oxygen by weight, each type of oxygenate, the purity of each oxygenate, and the percent oxygenate by volume for each oxygenate. If a CAR or blender CAR alters the oxygen content of a gasoline intended for use within a control area during a control period, the CAR or blender CAR must determine the oxygen content of the gasoline by use of the methodology specified in (1) above.

R307-301-5. Alternative Compliance Options.

(1) Each CAR or blender CAR shall comply with the standard specified in R307-301-3 by means of the method set forth in either (2) or (3) below and shall specify which option will be used at the time of the registration required under R307-301-7.

(2) Compliance calculation on average basis.

(a) The CAR or blender CAR shall determine compliance with the standard specified in R307-301-3 for each averaging period and for each control area by:

(i) Calculating the total volume of gasoline labeled as oxygenated that is sold or dispensed, not including volume dispensed or sold to another CAR or blender CAR, for use in the control area which is the sum of:

(A) the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed;

(B) minus the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed for use in a different control area;

(C) minus the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed for use in any non-control area.

(ii) Calculating the required total oxygen credit units. Multiply the total volume in gallons of gasoline labeled as oxygenated that is sold or dispensed for use in the control area, as determined by (i) above, by the oxygen content standard specified in R307-301-3(1).

(iii) Calculating the actual total oxygen credit units generated. The actual total oxygen credit units generated is the sum of the volume of each batch or truckload of gasoline labeled as oxygenated that was sold or dispensed for use in the control area as determined by (i) above, multiplied by the actual oxygen content by weight percent associated with each batch or truckload. If a batch or truckload of gasoline is blended under the substantially similar provisions of 42 U.S.C. 7545(f)(1) or under a waiver granted by the Environmental Protection Agency

under the provisions of 42 U.S.C. 7545(f)(4), any extra volume of oxygenate in excess of the substantially similar criteria including the blending tolerance of 0.2% oxygen by weight, or in excess of the appropriate waiver, cannot be included in the calculation of oxygen credit units.

(iv) Calculating the adjusted actual total oxygen credit units. The adjusted actual total oxygen content units is the sum of the actual total oxygen credit units generated, as determined by (iii) above;

(A) plus the total oxygen credit units purchased, acquired through trade and received; and

(B) minus the total oxygen credit units sold,given away and provided through trade.

(v) Comparing the adjusted actual total oxygen credit units with the required total oxygen credit units. If the adjusted actual total content oxygen credit units is greater than or equal to the required total oxygen credit units, then the standard in R307-301-3 is met. If the adjusted actual total oxygen credit units is less than the required total oxygen credit units, then the purchase of oxygen credit units is required in order to achieve compliance.

(vi) In transferring oxygen credit units, the transferor shall provide the transferee with information as to how the credits were calculated, including the volume and oxygen content by weight percent of the gasoline associated with the credits.

(b) To determine the oxygen credit units associated with each batch or truck load of oxygenated gasoline sold or dispensed into the control area, use the running weighted oxygen content (RWOC) of the tank from which and at the time the batch or truckload was received (see (c) below). In the case of batches or truckloads of gasoline to which oxygenate was added outside of the terminal storage tank from which it was received, use the weighted average of the RWOC and the oxygen content added as a result of the volume of the additional oxygenate added.

(c) Running weighted oxygen content. The RWOC accounts for the volume and oxygen content of all gasoline, including transfers to or from another CAR or blender CAR, which enters or leaves a terminal storage tank, and the oxygen contribution of all oxygenates which are added to the tank. The RWOC must be calculated each time gasoline enters or leaves the tank or whenever oxygenates are added to the tank. The RWOC is calculated weighing the following:

(i) the volume and oxygen content by weight percent of the gasoline in the storage tank at the beginning of the averaging period;

(ii) the volume and oxygen content by weight percent of gasoline entering the storage tank;

(iii) the volume and oxygen content by weight percent of gasoline leaving the storage tank; and

(iv) the volume, type, purity and oxygen content by weight percent of the oxygenates added to the storage tank.

(d) Credit transfers. Credits may be used in the compliance calculation in (2)(a)(i) above, provided that:

(i) the credits are generated in the same control area as they are used, i.e., no credits may be transferred between nonattainment areas;

(ii) the credits are generated in the same averaging period as they are used;

(iii) the ownership of credits is transferred only between CARs or blender CARs registered under the averaging compliance option specified in R307-301-7;

(iv) the credit transfer agreement is made no later than 30 working days, as defined in R307-301-1, after the final day of the averaging period in which the credits are generated; and

(v) the credits are properly created.

(e) Improperly created credits.

(i) No party may transfer any credits to the extent such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this paragraph are improperly created credits.

(ii) Improperly created credits may not be used, regardless of a credit transferee's good faith belief that the transferee was receiving valid credits.

(3) Compliance calculation on a per gallon basis. Each gallon of gasoline sold or dispensed by a CAR or blender CAR for use within each control area during the averaging period as defined in R307-301-1 shall have an oxygen content of at least the average oxygen content standard specified in R307-301-3(1). The maximum oxygen content which may be used to calculate compliance is the average oxygen content standard specified in R307-301-3. In addition, the CAR or blender CAR is prohibited from selling, trading or providing oxygen credits based on gasoline for which compliance is calculated under this alternative per-gallon method.

R307-301-6. Minimum Oxygen Content.

(1) Any gasoline which is sold or dispensed by a CAR, blender CAR, carrier, distributor, or reseller for use within a control area, as defined in R307-301-1, during the control period, shall contain not less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, unless it is sold or dispensed to another registered CAR or blender CAR. This requirement shall begin five working days, as defined in R307-301-1, before the applicable control period and shall apply until the end of that period.

(2) This requirement shall apply to all parties downstream of the CAR or blender CAR unless the gasoline will be sold or dispensed to another CAR or blender CAR. Any gasoline which is offered for sale, sold or dispensed to an ultimate consumer within a control area during a control period, as defined in R307-301-1, shall not contain less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%. This requirement shall apply during the entire applicable control period.

(3) Every refiner must determine the oxygen content of all gasoline produced by use of the methodologies described in R307-301-4. This determination shall include the oxygen content by weight percent, each type of oxygenate, and percent oxygenate by volume for each type of oxygenate.

(4) Any gasoline sold or dispensed by a CAR or blender CAR for use within a control area and for which compliance is demonstrated using the method specified in (3) shall contain not less than the average oxygen content standard specified in R307-301-3(1), unless the gasoline is sold or dispensed to another registered CAR or blender CAR.

R307-301-7. Registration.

(1) All persons who sell or dispense gasoline directly or indirectly to persons who sell or dispense to ultimate consumers in a control area during a control period, including CARs, blender CARs, carriers, resellers, and distributors, shall petition the director for registration not less than one calendar month in advance of such sales or transfers of gasoline into the control area during the control period.

(2) This petition for registration shall be on forms prescribed by the director and shall include the following information:

(a) the name and business address of the CAR, blender CAR, carrier, reseller, or distributor;

(b) in the case of a CAR, the address and physical location of each of the control area terminals from which the CAR operates;

(c) in the case of a blender CAR, the address and physical location of each control area oxygenate blending installation which is owned, leased, operated, or controlled, or supervised by a blender CAR;

(d) in the case of a carrier, distributor, or reseller, the names and addresses of retailers they supply;

(e) the address and physical location where documents which are required to be retained by R307-301 shall be kept; and

(f) in the case of a CAR or blender CAR, the compliance option chosen under provisions of R307-301-5 and a list of oxygenates which will be used.

(3) If the registration information previously supplied by a registered party under the provisions of (2)(a) through (e) becomes incomplete or inaccurate, that party shall submit updated registration information to the director within 15 working days as defined in R307-301-1. If the information required under (2)(f) is to change, the updated registration information must be submitted to the director before the change is made.

(4) No person shall participate in the oxygenated gasoline program as a CAR, blender CAR, carrier, reseller, or distributor until such person has been notified by the director that such person has been registered as a CAR, blender CAR, carrier, reseller, or distributor. Registration shall be valid for the time period specified by the director. The director shall issue each CAR, blender CAR, carrier, reseller, or distributor a unique identification number within one calendar month of the petition for registration.

R307-301-8. Recordkeeping.

(1) Records. All parties in the gasoline distribution network, as described below, shall maintain records containing compliance information enumerated or described below. These records shall be retained by the regulated parties for a period of two years after the end of each control period for which the information is required.

(a) Refiners. Refiners shall, for each separate quantity of gasoline produced or imported for use in a control area during a control period, maintain records containing the following information:

(i) results of the tests utilized to determine the types of oxygenates and percent by volume;

(ii) percent oxygenate content by volume of each oxygenate;

(iii) oxygen content by weight percent;

(iv) purity of each oxygenate;

(v) total volume of gasoline; and

(vi) the name and address of the party to whom each separate quantity of oxygenated gasoline was sold or transferred.

(b) Control area terminal operators. Persons who own, lease, operate or control gasoline terminals which serve control areas, or any truck- or terminal-lessee who subleases any portion of a leased tank or terminal to other persons, shall maintain a copy of the transfer document for each batch or truckload of gasoline received, purchased, sold or dispensed, and shall maintain records containing the following information:

(i) the owner of each batch of gasoline handled by each regulated installation if known, or the storage customer of record;

(ii) volume of each batch or truckload of gasoline going into or out of the terminal;

(iii) for all batches or truckloads of gasoline leaving the terminal, the RWOC of the batch or truckload;

(iv) for each oxygenate, the type of oxygenate, purity if available, and percent oxygenate by volume;

(v) oxygen content by weight percent of all batches or truckloads received at the terminal;

(vi) destination county of each tank truck sale or batch of gasoline as declared by the purchaser of the gasoline, if the destination is within Utah or Weber County;

(vii) the name and address of the party to whom the gasoline was sold or transferred and the date of the sale or transfer, and

(viii) the results of the tests for oxygenates, if performed, of each sale or transfer, and who performed the tests.

(c) CARs and blender CARs. Each CAR must maintain records containing the information listed in (b) above. Each CAR and blender CAR must maintain a copy of the transfer document for each shipment of gasoline received, purchased, sold or dispensed, as well as the records containing the following information:

(i) CAR or blender CAR identification number;

(ii) the name and address of the person from whom each shipment of gasoline was received, and the date when it was received;

(iii) data on each shipment of gasoline received, including:

(A) the volume of each shipment;

(B) type of oxygenate or oxygenates, and percentage by volume; and

(C) oxygen content by weight percent;

(iv) the volume of each receipt of bulk oxygenates;

(v) the name and address of the parties from whom bulk oxygenate was received;

(vi) the date and destination county of each sale of gasoline, if the destination is within Utah or Weber County;

(vii) data on each shipment of gasoline sold or dispensed including:

(A) the volume of each shipment;

(B) type of each oxygenate, and percent by volume for each oxygenate, and

(C) oxygen content by weight percent;

(viii) documentation of the results of all tests done regarding the oxygen content of gasoline;

(ix) the names, addresses and CAR or blender CAR identification numbers of the parties to whom any gasoline was sold or dispensed, and the dates of these transactions; and

(x) in the case of CARs or blender CARs that elect to comply with the average oxygen content standard specified in R307-301-3 by means of the compliance option specified in R307-301-5(2) must also maintain records containing the following information:

(A) records supporting and demonstrating compliance with the averaging standard specified in R307-301-3; and

(B) for any credits bought, sold, traded, or transferred, the dates of the transactions, the names, addresses and CAR or blender CAR identification numbers of the CARs and blender CARs involved in the individual transactions, and the amount of credits transferred. Any credits transferred must be accompanied by a demonstration of how those credits were calculated. Adequate documentation that both parties have agreed to all credit transfers within 30 working days, as defined in R307-301-1, following the close of the averaging period must be included.

(d) Retailers and wholesale purchaser-consumers within a control area must maintain the following records:

(i) the names, addresses and CAR, blender CAR, carrier, distributor, or reseller identification numbers of the parties from whom all shipments of gasoline were purchased or received, and the dates when they were received and for each shipment of gasoline bought, sold or transported:

(A) the transfer document as specified in R307-301-8(3) and

(B) a copy of each contract for delivery of oxygenated gasoline and

(ii) data on every shipment of gasoline bought, sold or transported, including:

(A) volume of each shipment;

(B) for each oxygenate, the type, percent by volume and purity (if available);

(C) oxygen content by weight percent; and

(D) destination county of each sale or shipment of

gasoline, if the destination is within Utah or Weber County; and

(iii) the name and telephone number of the person responsible for maintaining the records and the address where the records are located, if the location of the records is different from the station or outlet location.

(e) Carriers, distributors, resellers, terminal operators, and oxygenate blenders must keep a copy of the transfer document for each truckload or shipment of gasoline received, obtained, purchased, sold or dispensed.

R307-301-9. Reports.

(1) Each CAR or blender CAR that elects to comply with the average oxygen content standard specified in R307-301-3 by the compliance option specified in R307-301-5(2) shall submit a report to the director for each control period for each control area as defined in R307-301-1 reflecting the compliance information detailed in R307-301-5(2).

(2) Each CAR or blender CAR that elects to comply with the average oxygen content standard specified in R307-301-3 shall submit a report to the director for each control period for each control area as defined in R307-301-1 reflecting the compliance information detailed in R307-301-5(3), including the volume of oxygenated gasoline sold or dispensed into each control area during the control period.

(3) The report is due 30 working days, as defined in R307-301-1, after the last day of the control period for which the information is required. The report shall be filed using forms provided by the director.

R307-301-10. Transfer Documents.

Each time that physical custody or title of gasoline destined for a control area changes hands other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer installation, the transferor shall provide to the transferee, in addition to, or as part of, normal bills of lading, invoices, etc., a document containing information regarding that shipment. This document shall accompany every shipment of gasoline to a control area after it has been dispensed by a terminal, or the information shall be included in the normal paperwork which accompanies every shipment of gasoline. The information shall legibly and conspicuously contain the following information:

(1) the date of the transfer;

(2) the name, address, and CAR, blender CAR, carrier, distributor, or reseller identification number, if applicable, of the transferor;

(3) the name, address, and CAR, blender CAR, carrier, distributor, or reseller identification number, if applicable, of the transferee;

(4) the volume of gasoline which is being transferred;

(5) identification of the gasoline as oxygenated or, if non-oxygenated, with a statement labeling it as "Non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period";

(6) the location of the gasoline at the time of the transfer;

(7) type of each oxygenate and percentage by volume for each oxygenate;

(8) oxygen content by weight percent; and

(9) for gasoline which is in the gasoline distribution network between the refinery or import installation and the control area terminal, for each oxygenate used, the type of oxygenate, its purity and percentage by volume and the oxygen content by weight percent.

R307-301-11. Prohibited Activities.

(1) During the control period, no refiner, oxygenate blender, CAR, blender CAR, control area terminal operator, carrier, distributor or reseller may manufacturer, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transport of:

(a) gasoline which contains less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% oxygen, for use during the control period, in a control area unless clearly marked documents accompany the gasoline labeling it as "Non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period"; or

(b) gasoline represented as oxygenated which has an oxygen content which is improperly stated in the documents which accompany such gasoline.

(2) No retailer or wholesale purchaser-consumer may dispense, offer for sale, sell or store, for use during the control period, gasoline which contains less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% in a control area.

(3) No person may operate as a CAR or blender CAR or hold themselves out as such unless they have been properly registered by the director. No CAR or blender CAR may offer for sale or store, sell, or dispense gasoline, to any person not registered as a CAR or blender CAR for use in a control area, unless:

(a) the average oxygen content of the gasoline during the averaging period meets the standard established in R307-301-3; and

(b) the gasoline contains at least 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% on a per-gallon basis.

(4) For terminals which sell or dispense gasoline intended for use in a control area during a control period, the terminal owner or operator may not accept gasoline into the terminal unless:

(a) transfer documentation containing the information specified in R307-301-8(3) accompanies the gasoline and

(b) the terminal owner or operator conducts a quality assurance program to verify the accuracy of this information.

(5) No person may sell or dispense non-oxygenated gasoline for use in any control area during the control period, unless:

(a) the non-oxygenated gasoline is segregated from oxygenated gasoline;

(b) clearly marked documents accompany the non-oxygenated gasoline labeling it as "non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period," and

(c) the non-oxygenated gasoline is in fact not sold or dispensed to ultimate consumers during the control period in the control area.

(6) No named person may fail to comply with the recordkeeping and reporting requirements contained in R307-301-8 through 10.

(7) No person may sell, dispense or transfer oxygenated gasoline, except for use by the ultimate consumer at a retail outlet or wholesale purchaser-consumer installation, without transfer documents which accurately contain the information required by R307-301-10).

(8) Liability for violations of the prohibited activities.

(a) Where the gasoline contained in any storage tank at any installation owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender is found in violation of the prohibitions described in (1)(a) or (2) above, the following persons shall be in violation:

(i) the retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender who owns, leases, operates, controls or supervises the installation where the violation is found; and

(ii) each oxygenate blender, distributor, reseller, and carrier who, downstream of the control area terminal, sold, offered for sale, dispensed, supplied, offered for supply, stored,

transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(b) Where the gasoline contained in any storage tank at any installation owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender is found in violation of the prohibitions described in (1)(b) or (2) above, the following persons shall be in violation:

(i) the retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender who owns, leases, operates, controls or supervises the installation where the violation is found; and

(ii) each refiner, oxygenate blender, distributor, reseller, and carrier who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(9) Defenses for prohibited activities.

(a) In any case in which a refiner, oxygenate blender, distributor, reseller or carrier would be in violation under (1) above, that person shall not be in violation if they can demonstrate that they meet all of the following:

(i) that the violation was not caused by the regulated party or its employee or agent;

(ii) that refiner, oxygenate blender, distributor, reseller or carrier possesses documents which should accompany the gasoline, which contain the information required by R307-301-8; and

(iii) that refiner, oxygenate blender, distributor, reseller or carrier conducts a quality assurance sampling and testing program as described in (10) below.

(b) In any case in which a retailer or wholesale purchaser-consumer would be in violation under (2) above, the retailer or wholesale purchaser-consumer shall not be in violation if it can demonstrate that they meet all of the following:

(i) that the violation was not caused by the regulated party or its employee or agent; and

(ii) that the retailer or wholesale purchaser-consumer possess documents which should accompany the gasoline, which contain the information required by R307-301-8 through 10.

(c) Where a violation is found at an installation which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by (a) above, that the violation was caused by any of the following:

(i) an act in violation of law (other than the Clean Air Act or R307-301), or an act of sabotage or vandalism, or

(ii) the action of a reseller, distributor, oxygenate blender, carrier, or a retailer, or wholesale purchaser-consumer which is supplied by any of the persons listed in (a) above, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite periodic sampling and testing by the refiner to ensure compliance with such contractual obligation; or

(iii) the action of any carrier or other distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner or periodic sampling and testing which are reasonably calculated to prevent such action.

(d) In R307-301-8 through 11, the term "was caused" means that the party must demonstrate by specific showings or by direct evidence, that the violation was caused or must have been caused by another.

(10) Quality Assurance Program. In order to demonstrate an acceptable quality assurance program, a party must conduct periodic sampling and testing to determine if the oxygenated gasoline has oxygen content which is consistent with the product transfer documentation.

R307-301-12. Labeling of Pumps.

(1) Any person selling or dispensing oxygenated gasoline pursuant to R307-301 is required to label the fuel dispensing system with one of the following notices.

(a) "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This fuel contains up to (specify maximum percent by volume) (specific oxygenate or specific combination of oxygenates in concentrations of at least one percent)."

(b) "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This fuel contains up to (specify maximum percent by volume) (specific oxygenate or combination of oxygenates present in concentrations of at least one percent) from November 1 through February 29."

(2) The label letters shall be block letters of no less than 20-point type, at least 1/16 inch stroke (width of type), and of a color that contrasts with the label background color. The label letters that specify maximum percent oxygenate by volume and that disclose the specific oxygenate shall be at least 1/2 inch in height, 1/16 inch stroke (width of type).

(3) The label must be affixed to the upper one-half of the vertical surface of the pump on each side with gallonage and dollar amount meters from which gasoline can be dispensed and must be clearly readable to the public.

(4) The retailer or wholesale purchaser-consumer shall be responsible for compliance with R307-301-12.

R307-301-13. Inspections.

Inspections of registered parties, control area retailers, refineries, control area terminals, oxygenate blenders and control area wholesale purchaser-consumers may include the following:

(1) physical sampling, testing, and calculation of oxygen content of the gasoline as specified in R307-301-4;

(2) review of documentation relating to the oxygenated gasoline program, including but not limited to records specified in R307-301-8; and

(3) in the case of control area retailers and wholesale purchaser-consumers, verification that gasoline dispensing pumps are labeled in accordance with R307-301-12.

R307-301-14. Public and Industry Education Program.

The director shall provide to the affected public, mechanics, and industry information regarding the benefits of the program and other issues related to oxygenated gasoline.

KEY: air pollution control, motor vehicles, gasoline, petroleum

May 18, 2004 19-2-101

Notice of Continuation January 27, 2017 19-2-104

R307. Environmental Quality, Air Quality.
R307-302. Solid Fuel Burning Devices.
R307-302-1. Purpose and Definitions.

(1) R307-302 establishes visible emission standards and specifies when it is permissible to burn in solid fuel burning devices used to provide comfort heating.

(2) The following additional definitions apply to R307-302:

"Seasoned wood" means wood that has a moisture content of less than or equal to 25%.

"Sole source of heat" means the solid fuel burning device is the only available source of heat for the entire residence, except for small portable heaters.

"Solid fuel burning device" means fireplaces, wood stoves and boilers used for burning wood, coal, or any other nongaseous and non-liquid fuel, both indoors and outdoors, but excluding outdoor wood boilers, which are regulated under R307-208.

R307-302-2. Applicability.

(1) R307-302-3 and R307-302-6 shall apply to any solid fuel burning device used to provide comfort heating in PM10 or PM2.5 nonattainment or maintenance areas as defined in 40 CFR 81.345 (July 1, 2011). Collectively, The PM10 and PM2.5 nonattainment and maintenance plan areas are geographically defined as all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber County west of the Wasatch mountain range; all regions of Utah County; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

(2) R307-302-4 shall apply only within the city limits of Provo in Utah County.

(3) R307-302-5 shall apply in all portions of Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(4) The following exemptions apply to R307-302:

(a) R307-302 does not apply to restaurant and institutional food preparation.

(b) R307-302 does not apply to commercial and industrial boilers subject to an approval order issued under R307-401.

(c) R307-302-3 does not apply to sources located above 7,000 feet in elevation within Box Elder, Davis, Salt Lake, Tooele, Utah and Weber counties.

(d) R307-302 does not apply to firefighting training devices that meet the definition of a solid fuel burning device.

R307-302-3. No-Burn Periods for Particulates.

(1) A person using a solid fuel burning device as a sole source of heat must register with the director in order to be exempt during mandatory no-burn periods.

(2) When the ambient concentration of PM10 measured by the monitors in Salt Lake, Davis, Weber, or Utah counties reaches the level of 120 micrograms per cubic meter and the forecasted weather for the specific area includes a temperature inversion which is predicted to continue for at least 24 hours, the director will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for solid fuel burning devices is in effect. The mandatory no-burn periods will only apply to those areas or counties impacting the real-time monitoring site registering the 120 micrograms per cubic meter concentration. A person in the affected areas shall not use a solid fuel burning device unless it is the sole source of heat for an entire residence and registered with the director.

(3) PM10 Contingency Plan. If the PM10 Contingency Plan described in Section IX, Part A, of the State Implementation Plan has been implemented, the trigger level for no-burn periods as specified in R307-302-3(2) will be 110 micrograms per cubic meter for that area where the PM10 Contingency Plan has been implemented.

(4) When the ambient concentration of PM2.5 measured by monitors in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties are forecasted to reach or exceed 25 micrograms per cubic meter, the director will issue a public announcement to provide broad notification that a mandatory no-burn period for solid fuel burning devices is in effect. The mandatory no-burn periods will only apply to those counties identified by the director. A person within the geographical boundaries described in R307-302-2(1) shall not use a solid fuel burning device unless it is the sole source of heat for an entire residence and registered with the director.

(5) PM2.5 Contingency Plan. If the PM2.5 contingency plan of the State Implementation Plan has been implemented, the trigger level for no-burn periods as specified in R307-302-3(4) shall be 15 micrograms per cubic meter for the area where the PM2.5 contingency plan has been implemented.

R307-302-4. No-Burn Periods for Carbon Monoxide.

(1) Beginning on November 1 and through March 1, the director will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for solid fuel burning devices is in effect when the running eight-hour average carbon monoxide concentration as monitored by the state at 4:00 PM reaches a value of 6.0 ppm or more.

(2) In addition to the conditions contained in R307-302-4(1), the director may use meteorological conditions to initiate a no-burn period. These conditions are:

(a) A national weather service forecasted clearing index value of 250 or less;

(b) Forecasted wind speeds of three miles per hour or less;

(c) Passage of a vigorous cold front through the Wasatch Front; or

(d) Arrival of a strong high pressure system into the area.

(3) During the no-burn periods specified in R307-302-4(1) and (2), a person in Provo City shall not use a solid fuel burning device unless it is the sole source of heat for an entire residence and is registered with the director.

R307-302-5. Opacity and Prohibited Fuels for Heating Appliances.

(1) Except during no-burn periods as required by R307-302-3 and 4, visible emissions from solid fuel burning devices shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following:

(a) An initial fifteen minute start-up period, and

(b) A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling.

(2) Prohibited Fuels: A person shall not cause or allow any of the following materials to be burned in a solid fuel burning device at any time:

(a) asphaltic products;
(b) books and magazines;
(c) garbage;
(d) paints;
(e) colored/wrapping paper;
(f) plastic;
(g) rubber products;
(h) treated wood;
(i) waste petroleum products; or
(j) any other material not intended by a manufacturer for use as a fuel in a solid fuel burning device.

(3) A person burning wood in a solid fuel burning device shall only burn seasoned wood.

R307-302-6. Prohibition.

(1) No person shall sell, offer for sale, supply, install, or transfer a wood burning stove that is not EPA certified or a fireplace that is not EPA qualified.

(2) Ownership of a non EPA certified stove within a residential dwelling installed prior to March 6, 2014 may be transferred as part of a real estate transaction, so long as the unit remains intact within the real property of sale.

KEY: air pollution, fireplaces, stoves, solid fuel burning
February 1, 2017 19-2-101
Notice of Continuation May 6, 2015 19-2-104

R307. Environmental Quality, Air Quality.
R307-320. Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program.
R307-320-1. Purpose.

The purpose of this program is to reduce the number of measurable vehicle miles driven by employees commuting to and from work by requiring employers with work sites within ozone maintenance areas to implement strategies designed to reduce the employee drive-alone rate. An employer-based trip reduction program is authorized under 19-2-104(1)(h) and (2). It is a state implementation plan control strategy to reduce ambient ozone and is a potential contingency measure for carbon monoxide. An added benefit of the program is reducing the number of cars on increasingly congested roadways.

R307-320-2. Applicability.

(1) R307-320 applies to any federal, state, or local entity, or any other public department, district (including public universities and public school districts), or agency in Davis or Salt Lake County.

(2) If the contingency requirements for carbon monoxide are triggered as outlined in Section IX.C.8.f of the State Implementation Plan, R307-320 applies to any federal, state, or local entity, or any other public department, district (including public universities and public school districts), or agency in Ogden City.

R307-320-3. Definitions.

The following additional definitions apply to R307-320:

"Compressed Work Week" means any work schedule that eliminates at least one commute trip to a work site in each two week period.

"Drive-alone Rate" means the number of single-occupancy vehicles divided by the sum of single-occupancy vehicles, plus employees using mass transit, ridesharing, biking, walking, telecommuting or having credit for a compressed work week. The drive-alone rate calculation must be based on a typical Monday through Friday work week.

Drive-alone Rate = single-occupancy vehicles/(single-occupancy vehicles + mass transit users + rideshare participants + bikers + walkers + telecommuters + credit for compressed work week).

"Employee" means any person including persons employed by public universities or school districts, who works at or reports to a single work site at least three days per week for at least six months of the year.

"Employee Transportation Coordinator" means a person assigned the responsibility of developing, implementing, monitoring, tracking, and marketing the trip reduction plan for the employer.

"Employer" means federal, state, or local entity, or any other public department, district (including public universities or public school districts), or agency.

"Peak Travel Period" means the period beginning at 6 a.m. and ending at 10 a.m., Mondays through Fridays.

"Ridesharing" means transportation of more than one person for commute purposes in a vehicle.

"Single-occupancy Vehicles" means vehicles traveling to the work site with a driver and no passengers during the peak travel period.

"Target Drive-alone Rate" means a twenty percent reduction in the drive alone rate based on the 1990 census data for modes of travel in each county. The target drive-alone rate schedule is as follows:

TABLE
TARGET DRIVE-ALONE RATE SCHEDULE

	Davis County Drive-Alone Rate	Salt Lake County Drive-Alone Rate
From 1990 Census Data	0.76	0.77
1st year interim target drive-alone rate	0.72	0.73
2nd year interim target drive-alone rate	0.68	0.69
3rd year interim target drive-alone rate	0.67	0.67
4th year interim target drive-alone rate	0.65	0.65
5th year interim target drive-alone rate	0.63	0.64
6th year interim target drive-alone rate	0.61	0.62
Target drive-alone rate	0.61	0.62

"Telecommuting" means working at home or at a satellite work site, provided the employee does not use a single-occupancy vehicle to travel to the satellite work site.

"Trip Reduction Plan" means a set of strategies designed to reduce the drive-alone rate.

"Vehicle" means motorcycles and on-road vehicles powered by a gasoline or diesel internal combustion engine with nine or less seating positions for adults.

"Work Site" means a building and any group of buildings that are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of way.

R307-320-4. Employer Requirements.

(1) Each employer shall assign an employee trip reduction coordinator within 30 days after the effective date of R307-320.

(2) Each employer shall determine the drive-alone rate per work site on an annual basis for a typical Monday through Friday work week during the peak travel period. The drive-alone rate can be determined by one of the following methods in (a), (b) or (c) below.

(a) Information from an annual employee survey.

(i) The employer must use a standardized survey approved by the director. The survey shall ask the travel distance from the employee's home to the work site, what frequency and mode of transportation the employee used to get to work, and how often the employee participates in a telecommuting program or compressed work week schedule.

(ii) The employer shall administer the survey and shall capture, at a minimum, 75% of the employee population arriving at the work site during the peak travel period.

(b) Verifiable information, less than one year old of the submittal due date, from employer records including:

(i) employee work schedules;

(ii) employee participation in telecommuting schedules;

(iii) employee participation of mass transit;

(iv) employee participation in rideshare arrangements; and

(v) employee participation in non-vehicular transit.

(c) Another method of the employer's choosing, with written approval from the director.

(3) Each employer shall design and submit to the director an approvable trip reduction plan for each work site to meet the target drive-alone rate as specified by the target drive-alone rate schedule in R307-320-3.

(a) An employer may combine more than one work site in a trip reduction plan submittal.

(i) The target drive-alone rate for a multi-work site submission shall be a weighted average of the drive-alone rates for the individual work sites.

(ii) The employer may combine a trip reduction plan for any work site within the same county.

(b) The trip reduction plan submittal shall adhere to the following schedule:

(i) Submittal of a trip reduction plan shall be annually on

or before the anniversary of the initial due date.

(ii) For employers within ozone maintenance areas:

(A) The trip reduction plan must be submitted for approval within 90 days after the employer has been notified.

(B) If the employer has not been notified, then the trip reduction plan must be submitted no later than 360 days after the effective date of this rule.

(c) Materials and information submitted to the director shall include:

(i) A letter of commitment to fully implement an approved trip reduction plan signed by an authorized employee at the work site.

(ii) The name and signature of the employee transportation coordinator;

(iii) The drive-alone rate for the work site;

(iv) General work site information including name and address of organization; general layout of buildings and parking areas; location of major streets; location of nearby mass transit stops; number of total employees; number of employees arriving at the work site during peak travel periods; current and planned incentives, disincentives, and facilities available encouraging alternatives to single-occupant vehicle commuting; the type of activities conducted at the work site; and the time spent by the employee transportation coordinator in complying with the plan.

(d) A trip reduction plan designed to meet the target drive-alone rate schedule may include but is not limited to employer involvement in the following:

(i) Subsidized bus passes;

(ii) Rideshare matching programs;

(iii) Vanpool leasing programs;

(iv) Telecommuting programs;

(v) Compressed work week schedule programs and flexible work schedule programs;

(vi) Work site parking fee programs;

(vii) Preferential parking for rideshare participants;

(viii) Transportation for business related activities;

(ix) A guaranteed ride home program;

(x) On-site facility improvements;

(xi) Soliciting feedback from employees;

(xii) On-site daycare facilities;

(xiii) Coordination with local transit authorities for improved mass transit service and information on mass transit programs; and

(xiv) Recognition and rewards for employee participation.

(e) An approvable plan shall contain all the information required in R307-320-4. The director will approve or request revision of the trip reduction plan within 60 days of the plan submittal.

(4) Each employer shall implement a trip reduction plan approved by the director.

(5) Each employer shall inform employees of the trip reduction plan and options available to them for participation.

R307-320-5. Recordkeeping.

(1) The employer shall keep records of all documents necessary to prove compliance with and verify implementation of an approved trip reduction plan for at least two years from the plan approval date.

(2) Approved trip reduction plans shall be kept for five years from date of approval.

(3) Employer trip reduction records are subject to review by representatives of the director.

R307-320-6. Violations.

(1) The following are violations of this rule:

(a) failure to submit an approvable employer-based trip reduction plan as specified in R307-320-4;

(b) providing false information;

(c) failure to submit a revised employer-based trip reduction plan when requested by the director;

(d) failure to implement an approved trip reduction plan;

(e) failure to maintain records as specified in R307-320-5;

(f) upon receipt of the second disapproval notice and until a revised plan is submitted and approved, the employer is in violation of this rule.

(2) Failure to achieve the target drive-alone rate is not a violation of this rule.

R307-320-7. Exemptions.

(1) An employer with less than 100 employees at a work site is exempt from the requirements of this rule.

(2) An employer who has met the target drive-alone rate is exempt from requirements stated in R307-320-4(3) and (4). The employer must still submit the drive-alone rate information to the director annually.

(3) Employees using vehicles for commute purposes as part of their job responsibility for emergency response are exempt from the drive-alone rate determination if they do not have the option, because of employer policies, to participate in telecommuting programs, compressed work week schedules, or as a rideshare driver, as approved by the director.

(a) An employer seeking exemption status shall comply with all requirements of the rule until an exemption is granted.

(b) The director shall approve or deny a request for exemption within 90 days of application.

(4) Other exemptions may be granted on a case by case basis and must be approved by the director.

(a) The employer seeking exemption must be able to demonstrate that the trip reduction program causes an adverse impact on the employer's ability to provide services or creates an undue hardship.

(b) The employer may also seek an exemption by providing an alternative to the Trip Reduction Program that shows, at a minimum, for the work site seeking exemption, a reduction in oxides of nitrogen equivalent to that achieved by the Trip Reduction Program when implemented to the target drive-alone rate schedule in the table in R307-320-3. The employer shall provide all substantiating information and calculations.

(c) An employer seeking exemption status shall comply with all requirements of the rule until an exemption is granted.

(d) The director shall approve or deny a request for exemption within 90 days of application.

KEY: air pollution, motor vehicles, trip reduction
March 9, 2007 19-2-104(1)(h)
Notice of Continuation January 27, 2017

R307. Environmental Quality, Air Quality.
R307-325. Ozone Nonattainment and Maintenance Areas: General Requirements.
R307-325-1. Purpose.

The purpose of R307-325 is to establish general requirements for control of volatile organic compounds (VOCs) in any nonattainment or maintenance area.

R307-325-2. Applicability.

R307-325 applies to all sources located in any nonattainment or maintenance area for ozone.

R307-325-3. Definition and General Requirement.

No person shall allow or cause volatile organic compounds (VOCs) to be spilled, discarded, stored in open containers, or handled in any other manner that would result in greater evaporation of VOCs than would have if reasonably available control technology (RACT) had been applied.

R307-325-4. Compliance Schedule.

All sources within any newly designated nonattainment area for ozone shall be in compliance with this rule within 180 days of the effective date of designation to nonattainment.

KEY: air pollution, emission controls, ozone, RACT
March 9, 2007 19-2-104(1)(a)
Notice of Continuation January 27, 2017

R307. Environmental Quality, Air Quality.
R307-326. Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries.
R307-326-1. Purpose.

The purpose of R307-326 is to establish Reasonably Available Control Technology (RACT), as required by section 182(b)(2)(A) of the Clean Air Act, for the control of hydrocarbon emissions from petroleum refineries that are located in ozone nonattainment and maintenance areas. The rule is based on federal control technique guidance documents.

R307-326-2. Applicability.

R307-326 applies to the owner or operator of any petroleum refinery located in any ozone nonattainment or maintenance area.

R307-326-3. Definitions.

The following additional definitions apply to R307-326.

"Accumulator" means the reservoir of a condensing unit receiving the condensate from the condenser.

"Condenser" means any device that removes condensable vapors by a reduction in the temperature of captured gases.

"Control System" means any number of control devices, including condensers, that are designed and operated to reduce the quantity of VOCs emitted to the atmosphere.

"Hot Well" means the reservoir of a condensing unit receiving the warm condensate consisting primarily of water from the condenser.

"Petroleum Refinery Complex" means any source or installation engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products through distillation of petroleum or through redistillation, cracking, rearrangement, or reforming of unfinished petroleum derivatives.

"Process Drain" means any drain used in a refinery complex on equipment that processes or transfers a VOC or a mixture of VOCs.

"Process Unit Turnaround" means the procedure of shutting a refinery unit down after a run to do necessary maintenance and repair work and putting the unit back in operation.

"Vacuum Producing System" means any reciprocating, rotary, or centrifugal blower or compressor, or any jet ejector or device that takes suction from a pressure below atmospheric and discharges against atmospheric pressure.

R307-326-4. Vacuum Producing Systems.

The emission of noncondensable VOCs from the condensers, hot wells, or accumulators of vacuum producing systems shall be controlled by:

(1) piping the noncondensable vapors to a firebox or incinerator, or

(2) compressing the vapors and adding them to the refinery fuel gas, or

(3) other equally effective means provided the design and effectiveness of such means are documented and submitted to and approved by the director.

R307-326-5. Wastewater (Oil/Water) Systems.

Any wastewater separator handling VOCs shall be equipped with:

(1) covers and seals approved by the Director on all separators and forebays,

(2) lids or seals on all openings in covers, separators, and forebays. Such lids or seals shall be in the closed position at all times except when in actual use.

R307-326-6. Process Unit Turnaround.

The owner or operator of a petroleum refinery shall insure that a minimum of VOCs are emitted to the atmosphere during process unit turnarounds. The owner or operator shall develop and submit to the director for approval a procedure for minimizing VOC emissions during turnarounds. At a minimum the procedure shall provide for:

(1) venting of the process unit or vessel during depressurization and purging to a vapor recovery system, flare or firebox, and

(2) preventing discharge to the atmosphere of emissions of VOCs from a process unit or vessel until its internal pressure is 136 kPa (19.7 psia) or less; or

(3) an equally effective system provided the design and effectiveness of such system are documented and submitted to and approved by the director.

(4) keeping records of the following items:

(a) every date that each process unit or vessel is shut down;

(b) the approximate vessel VOC concentration when the VOCs were first discharged to the atmosphere; and

(c) the approximate total quantity of VOCs emitted to the atmosphere.

(5) maintaining records. The records required in (4) above shall be kept for at least two years and shall be made available for review by the director or the director's representative.

R307-326-7. Catalytic Cracking Units.

Flue gas produced by catalytic cracker catalyst regeneration units shall be vented to a waste heat boiler or a process heater firebox, or incinerated, or controlled by other methods, provided the design and effectiveness of such methods are documented, submitted to, and approved by the director.

R307-326-8. Safety Pressure Relief Valves.

All safety pressure relief valves handling organic material shall be vented to a flare, firebox, or vapor recovery system, or controlled by the inspection, monitoring, and repair requirements described in R307-326-9.

R307-326-9. Monitoring of Leaks from Petroleum Refinery Equipment.

(1) The owner or operator of a petroleum refinery complex shall develop and conduct a VOC monitoring program and shall follow the recording, reporting, and operating requirements consistent with R307-326-9. The monitoring program shall be submitted 30 days prior to start up of the petroleum refinery complex or as determined necessary by the director.

(2) Any affected component within a petroleum refinery complex found to be leaking shall be repaired and retested as soon as practicable, but not later than fifteen (15) days after the leak is detected. A leaking component is defined as one that has a concentration of VOCs exceeding 10,000 parts per million by volume (ppmv) when tested by a VOC detection instrument at the leak source in the manner described in 40 CFR 60, Appendix A, Reference Method 21, using methane or hexane as the calibration gas. Components not subject to New Source Performance Standards Subpart GGG shall use methane or hexane as calibration gas, provided a relative response factor for each individual instrument is determined for the calibration gas used. Those leaks that cannot be repaired until the unit is shut down for turnaround shall be identified with a tag and recorded as per (6) below and shall be reported as per (7) below. The Director, in coordination with the refinery owner or operator, may require early unit turnaround based on the number and severity of tagged leaks awaiting turnaround.

(3) Monitoring Requirements.

(a) In order to ensure that all existing VOC leaks are identified and that new VOC leaks are located as soon as practicable, the refinery owner or operator shall perform necessary monitoring using visual observations when specified

or the method described in 40 CFR 60, Appendix A, Reference Method 21, as follows:

(i) Monitor at least one time per year (annually) all pump seals, valves in liquid service, and process drains;

(ii) Monitor four times per year (quarterly) all compressor seals, valves in gaseous service, and pressure relief valves in gaseous service;

(iii) Monitor visually 52 times per year (weekly) all pump seals;

(iv) Monitor within 24 hours (with a portable VOC detection device) or repair within 15 days any pump seal from which liquids are observed dripping;

(v) Monitor any relief valve within 24 hours after it has been vented to the atmosphere;

(vi) Monitor immediately after repair any component that was found leaking;

(vii) For all other valves considered "unsafe-to-monitor" or inaccessible during an annual inspection, the owner or operator shall document to the director the number of valves considered "unsafe-to-monitor" or inaccessible, the dangers involved or reasons for inaccessibility, the location of these valves, and the procedures that the owner or operator shall follow to ensure that the valves do not leak. The documentation for each calendar year shall be submitted for approval to the director 15 days after the last day of each calendar year. At a minimum, the inaccessible valves shall be monitored at least once per year (annually).

(b) For the purpose of R307-326, gaseous service for pipeline valves and pressure relief valves is defined as the VOCs being gaseous at conditions that prevail in the components during normal operations. Pipeline valves and pressure relief valves in gaseous service and other components subject to leaks shall be noted or marked so that their location within the refinery complex is obvious to the refinery operator performing the monitoring and to the State of Utah, Division of Air Quality.

(4) Exemptions. The following are exempt from the monitoring requirements of (3) above:

(a) Pressure relief devices that are connected to an operating flare header, firebox, or vapor recovery devices, storage tank valves, and valves that are not externally regulated;

(b) Refinery equipment containing a stream composition less than 10 percent by weight VOCs; and

(c) Refinery equipment containing natural gas supplied by a public utility as defined by the Utah Public Service Commission.

(5) Alternate Monitoring Methods and Requirements.

(a) If at any time after two complete liquid service inspections and five complete gaseous service inspections, the owner or operator of a petroleum refinery can demonstrate that modifications to (3) above are in order, he may apply in writing to the Air Quality Board for a variance from the requirements of (3) above.

(b) This submittal shall include data that have been developed to justify the modification to (3) above. As a minimum, the submittal should contain the following information:

(i) the name and address of the company;

(ii) the name and telephone number of the responsible company representative;

(iii) a description of the proposed alternate monitoring procedures; and

(iv) a description of the proposed alternate operational or equipment controls.

(6) Recording Requirements. Identified leaks shall be noted and affixed with a readily visible and weatherproof tag bearing the identification of the leak and the date the leak was detected. The tag shall remain in place until the leaking component is repaired. The presence of the leak shall also be noted in a log maintained by the operator or owner of the refinery. The log shall contain, at a minimum, the name of the process unit where the component is located, the type of component, the tag number, the date the leak is detected, the date repaired, and the date and instrument reading when the recheck of the component is made. The log should also indicate those leaks that cannot be repaired until turnaround, and summarize the total number of components found leaking. The operator or owner of the refinery complex shall retain the leak detection log for two years after the leak has been repaired and shall make the log available to the director upon request.

(7) Reporting Requirements. The operator or owner of a petroleum refinery complex shall submit a report to the director by the 15th day of January, April, July, and October of each year listing the total number of components inspected, all leaks that have been located during the previous 3 calendar months but not repaired within 15 days, all leaking components awaiting unit turnaround and the total number of components found leaking. In addition, the refinery operator or owner shall submit a signed statement with each report that all monitoring has been performed as stipulated in R307-326-9.

(8) Additional Requirements. Any time a valve, with the exception of safety pressure relief valves, is located at the end of a pipe or line containing VOCs, the end of the line shall be sealed with one of the following: a second valve, a blind flange, a plug or a cap. This sealing device shall only be removed when the line is in use for sampling.

R307-326-10. Alternate Methods of Control.

(1) Any person may apply to the director for approval of an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule. The application must include a demonstration that the proposed alternate produces an equal or greater air quality benefit than that required by R307-326, or that the alternate test method is equivalent to that required by these rules. The director shall obtain concurrence from EPA when approving an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule.

(2) Manufacturer's operational specifications, records, and testings of any control system shall use the applicable EPA Reference Methods of 40 CFR Part 60, the most recent EPA test methods, or EPA-approved state methods, to determine the efficiency of the control device. In addition, the owner or operator must meet the applicable requirements of record keeping for any control device. A record of all tests, monitoring, and inspections required by R307-326 shall be maintained by the owner or operator for a minimum of 2 years and shall be made available to the director or the director's representative upon request. Any malfunctioning control device shall be repaired within 15 calendar days after it is found by the owner or operator to be malfunctioning, unless otherwise approved by the director.

(3) For purposes of determining compliance with emission limits, VOCs and nitrogen oxides will be measured by the test methods identified in federal regulation or approved by the director. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

R307-326-11. Compliance Schedule.

All sources within any newly designated nonattainment area for ozone shall be in compliance with this rule within 180 days of the effective date of designation to nonattainment.

KEY: air pollution, refinery, gasoline, ozone
March 9, 2007 19-2-101
Notice of Continuation January 27, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-327. Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage.
R307-327-1. Purpose.

The purpose of R307-327 is to establish Reasonably Available Control Technology (RACT), as required by section 182(2)(A) of the Clean Air Act, for petroleum refineries and petroleum liquid storage facilities that are located in any ozone nonattainment or maintenance area. The rule is based on federal control technique guidance documents.

R307-327-2. Applicability.

R307-327 applies to the owner or operator of any petroleum refinery or petroleum liquid storage facility located in any ozone nonattainment or maintenance area.

R307-327-3. Definitions.

The following additional definitions apply to R307-327:

"Average Monthly Storage Temperature" means the average daily storage temperature measured over a period of one month.

"Waxy, Heavy Pour Crude Oil" means a crude oil with a pour point of 50 degrees F or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for pourpoint of petroleum oils."

R307-327-4. General Requirements.

(1) Any existing stationary storage tank, reservoir or other container with a capacity greater than 40,000 gallons (150,000 liters) that is used to store volatile petroleum liquids with a true vapor pressure greater than 10.5 kilo pascals (kPa) (1.52 psia) at storage temperature shall be fitted with control equipment that will minimize vapor loss to the atmosphere. Storage tanks, except those erected before January 1, 1979, which are equipped with external floating roofs, shall be fitted with an internal floating roof that shall rest on the surface of the liquid contents and shall be equipped with a closure seal or seals to close the space between the roof edge and the tank wall, or alternative equivalent controls, provided the design and effectiveness of such equipment is documented and submitted to and approved by the director. The owner or operator shall maintain a record of the type and maximum true vapor pressure of stored liquid.

(2) The owner or operator of a petroleum liquid storage tank not subject to (1) above, but containing a petroleum liquid with a true vapor pressure greater than 7.0 kPa (1.0 psia), shall maintain records of the average monthly storage temperature, the type of liquid, throughput quantities, and the maximum true vapor pressure.

R307-327-5. Installation and Maintenance.

(1) The owner or operator shall ensure that all control equipment on storage vessels is properly installed and maintained.

(a) There shall be no visible holes, tears or other openings in any seal or seal fabric and all openings, except stub drains, shall be equipped with covers, lids, or seals.

(b) All openings in floating roof tanks, except for automatic bleeder vents, rim space vents, and leg sleeves, shall provide a projection below the liquid surface.

(c) The openings shall be equipped with a cover, seal, or lid.

(d) The cover, seal, or lid is to be in a closed position at all times except when the device is in actual use.

(e) Automatic bleeder vents shall be closed at all times except when the roof is floated off or landed on the roof leg supports. Rim vents shall be set to open when the roof is being floated off the leg supports or at the manufacturer's recommended setting.

(f) Any emergency roof drain shall be provided with a slotted membrane fabric cover or equivalent cover that covers at least 90 percent of the area of the opening.

(2) The owner or operator shall conduct routine inspections from the top of the tank for external floating roofs or through roof hatches for internal floating roofs at six month or shorter intervals to insure there are no holes, tears, or other openings in the seal or seal fabric.

(a) The cover must be uniformly floating on or above the liquid and there must be no visible defects in the surface of the cover or petroleum liquid accumulated on the cover.

(b) The seal(s) must be intact and uniformly in place around the circumference of the cover between the cover and tank wall.

(3) A close visible inspection of the primary seal of an external floating roof is to be conducted at least once per year from the roof top unless such inspection requires detaching the secondary seal, which would result in damage to the seal system.

(4) Whenever a tank is emptied and degassed for maintenance, an emergency, or any other similar purpose, a close visible inspection of the cover and seals shall be made.

(5) The director must be notified 7 days prior to the refilling of a tank that has been emptied, degassed for maintenance, an emergency, or any other similar purpose. Any non-compliance with this rule must be corrected before the tank is refilled.

R307-327-6. Retrofits for Floating Roof Tanks.

(1) Except where specifically exempted in (3) below, all existing external floating roof tanks with capacities greater than 950 barrels (40,000 gals) shall be retrofitted with a continuous secondary seal extending from the floating roof to the tank wall (a rim-mounted secondary seal) if:

(a) The tank is a welded tank, the true vapor pressure of the contained liquid is 27.6 kPa (4.0 psia) or greater and the primary seal is one of the following:

(i) A metallic type shoe seal, a liquid-mounted foam seal, a liquid-mounted liquid-filled seal, or

(ii) Any other primary seals that can be demonstrated equivalent to the above primary seals.

(b) The tank is a riveted tank, the true vapor pressure of the contained liquid is 10.5 kPa (1.5 psia) or greater, and the primary seal is as described in (a) above.

(c) The tank is a welded or riveted tank, the true vapor pressure of the contained liquid is 10.5 kPa (1.5 psia) or greater and the primary seal is vapor-mounted. When such primary seal closure device can be demonstrated equivalent to the primary seals described in (a) above, these processes apply.

(2) The owner or operator of a storage tank subject to this rule shall ensure that all the seal closure devices meet the following requirements:

(a) There shall be no visible holes, tears, or other openings in the seals or seal fabric.

(b) The seals must be intact and uniformly in place around the circumference of the floating roof between the floating roof and the tank wall.

(c) For vapor mounted primary seals, the accumulated area of gaps between the secondary seal and the tank wall shall not exceed 21.2 cm^2 per meter of tank diameter (1.0 in^2 per ft. of tank diameter) and the width of any gap shall not exceed 1.27 cm (1/2 in.). The owner or operator shall measure the secondary seal gap annually and make a record of the measurement.

(3) The following are specifically exempted from the requirements of (1) above:

(a) External floating roof tanks having capacities less than 10,000 barrels (420,000 gals) used to store produced crude oil and condensate prior to custody transfer.

(b) A metallic type shoe seal in a welded tank that has a secondary seal from the top of the shoe seal to the tank wall (a

shoe mounted secondary seal).

(c) External floating roof tanks storing waxy, heavy pour crudes.

(d) External floating roof tanks with a closure seal device or other devices installed that will control volatile organic compounds (VOC) emissions with an effectiveness equal to or greater than the seals required in (1) above. It shall be the responsibility of the owner or operator of the source to demonstrate the effectiveness of the alternative seals or devices to the director. No exemption under (3) shall be granted until the alternative seals or devices are approved by the director.

R307-327-7. Alternate Methods of Control.

(1) Any person may apply to the director for approval of an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule. The application must include a demonstration that the proposed alternate produces an equal or greater air quality benefit than that required by R307-327, or that the alternate test method is equivalent to that required by these rules. The director shall obtain concurrence from EPA when approving an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule.

(2) Manufacturer's operational specifications, records, and testings of any control system shall use the applicable EPA Reference Methods of 40 CFR Part 60, the most recent EPA test methods, or EPA-approved state methods, to determine the efficiency of the control device. In addition, the owner or operator must meet the applicable requirements of record keeping for any control device. A record of all tests, monitoring, and inspections required by R307-327 shall be maintained by the owner or operator for a minimum of 2 years and shall be made available to the director or the director's representative upon request. Any malfunctioning control device shall be repaired within 15 calendar days after it is found by the owner or operator to be malfunctioning, unless otherwise approved by the director.

(3) For purposes of determining compliance with emission limits, VOCs and nitrogen oxides will be measured by the test methods identified in federal regulation or approved by the director. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

R307-327-8. Compliance Schedule.

All sources within any newly designated nonattainment area for ozone shall be in compliance with this rule within 180 days of the effective date of designation to nonattainment.

KEY: air pollution, petroleum, gasoline, ozone
March 9, 2007 19-2-104(1)(a)
Notice of Continuation January 27, 2017

R307. Environmental Quality, Air Quality.
R307-328. Gasoline Transfer and Storage.
R307-328-1. Purpose.

The purpose of R307-328 is to establish Reasonably Available Control Technology (RACT) for control of gasoline vapors during the filling of gasoline cargo tank and storage tanks in Utah. The rule is based on federal control technique guidance documents. This requirement is commonly referred to as stage I vapor recovery.

R307-328-2. Applicability.

(1) Gasoline Cargo Tanks. R307-328 applies to the owner or operator of any gasoline cargo tank that loads or unloads gasoline in Utah.

(2) Gasoline Dispensing. R307-328 applies to the owner or operator of any bulk terminal, bulk plant, stationary storage container, or service station located in Utah that dispenses 10,000 gallons or more in any one calendar month.

(3) This rule applies to all gasoline cargo tanks and gasoline dispensing facilities that operate within Utah according to the compliance schedule defined in section 328-9 of this rule.

(4) All references to 40 CFR in R307-328 shall mean the version that is effective as of the date referenced in R307-101-3.

R307-328-3. Definitions.

The following additional definitions apply to R307-328.

"Bottom Filling" means the filling of a tank through an inlet at or near the bottom of the tank designed to have the opening covered by the liquid after the pipe normally used to withdraw liquid can no longer withdraw any liquid.

"Submerged Fill Pipe" means any fill pipe with a discharge opening which is entirely submerged when the liquid level is 6 inches above the bottom of the tank and the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

"Gasoline cargo tank" means gasoline cargo tank as defined in 40 CFR 63.421 that is hereby incorporated by reference.

R307-328-4. Loading of Tank Trucks, Trailers, Railroad Tank Cars, and Other Transport Vehicles.

(1) No person shall load or permit the loading of gasoline into any gasoline cargo tank unless the emissions from such vehicle are controlled by use of a vapor collection and control system and submerged or bottom filling. RACT shall be required and in no case shall vapor emissions to the atmosphere exceed 0.640 pounds per 1,000 gallons transferred.

(2) Such vapor collection and control system shall be properly installed and maintained.

(3) The loading device shall not leak.

(4) The loading device shall utilize the dry-break loading design couplings and shall be maintained and operated to allow no more than an average of 15 cc drainage per disconnect for 5 consecutive disconnects.

(5) All loading and vapor lines shall be equipped with fittings which make a vapor tight connection and shall automatically close upon disconnection to prevent release of the organic material.

(6) A gasoline storage and transfer installation that receives inbound loads and dispatches outbound loads ("bulk plant") need not comply with R307-328-4 if it does not have a daily average throughput of more than 3,900 gallons (15,000 or more liters) of gasoline based upon a 30-day rolling average. Such installations shall on-load and off-load gasoline by use of bottom or submerged filling. The emission limitation is based on operating procedures and equipment specifications using Reasonably Available Control Technology as defined in EPA documents EPA 450/2-77-026 October 1977, "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals," and EPA-450/2-77-035 December 1977, "Control of Volatile Organic Emissions from Bulk Gasoline Plants." The design effectiveness of such equipment and the operating procedures must be documented and submitted to and approved by the director.

(7) Hatches of gasoline cargo tanks shall not be opened at any time during loading operations except to avoid emergency situations or during emergency situations. Pressure relief valves on storage tanks and gasoline cargo tanks shall be set to release at the highest possible pressure, in accordance with State or local fire codes and National Fire Prevention Association guidelines. Pressure in the vapor collection system shall not exceed the gasoline cargo tank pressure relief setting.

(8) Each owner or operator of a gasoline storage or dispensing installation shall conduct testing of vapor collection systems used at such installation and shall maintain records of all tests for no less than two years. Testing procedures of vapor collection systems shall be approved by the director and shall be consistent with the procedures described in the EPA document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA-450/2-78-051.

(9) Semi-annual testing shall be conducted and records maintained of such test. The frequency of tests may be altered by the director upon submittal of documentation which would justify a change.

(10) The vapor collection and vapor processing equipment shall be designed and operated to prevent gauge pressure in the gasoline cargo tank from exceeding 18 inches of water and prevent vacuum from exceeding 6 inches of water. During testing and monitoring, there shall be no reading greater than or equal to 100 percent of the lower explosive limit measured at 1.04 inches around the perimeter of a potential leak source as detected by a combustible gas detector. Potential leak sources include, but are not limited to, piping, seals, hoses, connections, pressure or vacuum vents, and vapor hoods. In addition, no visible liquid leaks are permitted during testing or monitoring.

R307-328-5. Stationary Source Container Loading.

(1) No person shall transfer or permit the transfer of gasoline from any gasoline cargo tank into any stationary storage container with a capacity of 250 gallons or greater unless such container is equipped with a submerged fill pipe that extends to no more than twelve inches from the bottom of the storage tank for fill pipes installed on or before November 9, 2006, and no more than six inches form the bottom of the storage tank for fill pipes installed after November 9, 2006, and at least 90 percent of the gasoline vapor, by weight, displaced during the filling of the stationary storage container is prevented from being released to the atmosphere. This requirement shall not apply to:

(a) the transfer of gasoline into any stationary storage container of less than 550 gallons used primarily for the fueling of implements of husbandry if such container is equipped with a permanent submerged fill pipe;

(b) the transfer of gasoline into any stationary storage container having a capacity of less than 2,000 gallons which was installed prior to January 1, 1979, if such container is equipped with a permanent submerged fill pipe;

(c) the transfer of gasoline to storage tanks equipped with floating roofs or their equivalent which have been approved by the director.

(2) The 90 percent performance standard of the vapor control system shall be based on operating procedures and equipment specifications. The design effectiveness of such equipment and the operating procedure must be documented and submitted to and approved by the director.

(3) Each owner or operator of a gasoline storage tank or the owner or operator of the gasoline cargo tank subject to (1) above shall install vapor control equipment, which includes, but

is not limited to:

(a) vapor return lines and connections sufficiently free of restrictions to allow transfer of vapor to the gasoline cargo tank or to the vapor control system, and to achieve the required recovery;

(b) a means of assuring that the vapor return lines are connected to the gasoline cargo tank, or vapor control system, and storage tank during tank filling;

(c) restrictions in the storage tank vent line designed and operated to prevent:

(i) the release of gasoline vapors to the atmosphere during normal operation; and

(ii) gauge pressure in the gasoline cargo tank from exceeding 18 inches of water and vacuum from exceeding 6 inches of water.

R307-328-6. Gasoline Cargo Tank.

(1) Gasoline cargo tanks must be designed and maintained to be vapor tight during loading and unloading operations as well as during transport, except for normal pressure venting required under United States Department of Transportation Regulations.

(2) The design of the vapor recovery system shall be such that when the gasoline cargo tank is connected to an approved storage tank vapor recovery system or loading terminal, 90% vapor recovery efficiencies are realized. The connectors of the gasoline cargo tanks shall be compatible with the fittings on the fill pipes and vapor vents at the storage containers and gasoline loading terminals where the gasoline cargo tank will service or be serviced. Adapters may be used to achieve compatibility.

(3) No person shall knowingly allow the introduction of gasoline into, dispensing of gasoline from, or transportation of gasoline in a gasoline cargo tank that does not meet the leak tight testing requirements of R307-328-7.

(4) A vapor-laden gasoline cargo tank may be refilled only at installations equipped to recover, process or dispose of vapors. Gasoline cargo tanks that only service locations with storage containers specifically exempted from the requirements of R307-328-5 need not be retrofitted to comply with R307-328-6(1)-(3) above, provided such gasoline cargo tanks are loaded through a submerged fill pipe or equivalent equipment provided the design and effectiveness of such equipment are documented and submitted to and approved by the director.

R307-328-7. Vapor Tightness Testing.

(1) Gasoline cargo tanks and their vapor collection systems shall be tested annually for leakage in accordance with the test methods and vapor tightness standards in 40 CFR 63.425(e) which are hereby incorporated by reference.

(2) Each owner or operator of a gasoline cargo tank shall have documentation in their possession demonstrating that the gasoline cargo tank has passed the annual test in (1) above within the preceding twelve months.

(3) The vapor tightness documentation described in (2), as well as record of any maintenance performed, shall be retained by the owner or operator of the gasoline cargo tank for a two year period and be available for review by the director or the director's representative.

(4) The owner or operator of a railcar gasoline cargo tank may use the testing, recordkeeping, and reporting requirements in 40 CFR 63.425(i), that is hereby incorporated by reference, as an alternative to the annual testing requirements in (1) through (3) above.

R307-328-8. Alternate Methods of Control.

(1) Any person may apply to the director for approval of an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule. The application must include a demonstration that the proposed alternate produces an equal or greater air quality benefit than that required by R307-328, or that the alternate test method is equivalent to that required by these rules. The director shall obtain concurrence from EPA when approving an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule.

(2) Manufacturer's operational specifications, records, and testings of any control system shall use the applicable EPA Reference Methods of 40 CFR Part 60, the most recent EPA test methods, or EPA-approved state methods, to determine the efficiency of the control device. In addition, the owner or operator must meet the applicable requirements of record keeping for any control device. A record of all tests, monitoring, and inspections required by R307-328 shall be maintained by the owner or operator for a minimum of 2 years and shall be made available to the director or the director's representative upon request. Any malfunctioning control device shall be repaired within 15 calendar days after it is found by the owner or operator to be malfunctioning, unless otherwise approved by the director.

(3) For purposes of determining compliance with emission limits, volatile organic compounds and nitrogen oxides will be measured by the test methods identified in federal regulation or approved by the director. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

R307-328-9. Compliance Schedule.

(1) Effective May 1, 2000, all Facilities located in Davis, Salt Lake, Utah, and Weber Counties shall be in compliance with this rule.

(2) All other facilities located in Utah, shall be in compliance with this rule according to the following phase-in schedule:

(a) Facilities located in Box Elder, Cache, Tooele and Washington Counties shall be in compliance with this rule by April 30, 2009.

(b) Facilities located in Emery, Iron, Juab, Millard, Sevier, Summit and Uintah Counties shall be in compliance with this rule by April 30, 2010.

(c) All facilities located in Utah shall be in compliance with this rule by April 30, 2011.

(3) If this implementation schedule results in a scheduling and/or financial hardship for an individual facility, that facility may request a six-month extension from the director. A maximum of two six-month extensions may be granted. Regardless of extension requests submitted, all facilities must be in compliance with this rule not later than April 30, 2011.

(4) A request for an extension must be documented and contain valid reasons why a facility will not able to meet the phase-in schedule indicated in (2)(a) or (b) above. A late start on preparation or planning is not a valid reason to grant an extension. The request for extension must also contain a proposed implementation schedule that shows compliance to this rule at the earliest possible date, but no later than April 30, 2011.

(5) The vapor tightness testing standard in R307-328-7(1) shall apply to tests conducted after June 7, 2011. All gasoline cargo tanks shall be tested using the vapor tightness testing standard in R307-328-7(1) by June 7, 2012.

R307-328-10. Authorized Contractors.

(1) All modifications performed on underground storage tanks regulated by Title 19, Chapter 6, Part 4, the Utah Underground Storage Tank Act, to bring them into compliance with R307-328, shall be performed by contractors certified

under R311-201.

KEY: air pollution, gasoline transport, ozone
February 4, 2016 19-2-101
Notice of Continuation January 27, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-335. Degreasing and Solvent Cleaning Operations.
R307-335-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emission from degreasing and solvent cleaning operations.

R307-335-2. Applicability.

R307-335 applies to all degreasing or solvent cleaning operations that use VOCs and that are located in PM10 and PM2.5 nonattainment and maintenance plan areas as defined in 40 CFR 81.345 (July 1, 2011).

R307-335-3. Definitions.

The following additional definitions apply to R307-335:

"Batch open top vapor degreasing" means the batch process of cleaning and removing grease and soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

"Cold cleaning" means the batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing or immersing while maintaining the solvent below its boiling point.

"Conveyorized degreasing" means the continuous process of cleaning and removing greases and soils from metal surfaces by using either cold or vaporized solvents.

"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

"Freeboard ratio" means the freeboard height (distance between solvent line and top of container)divided by the width of the degreaser.

"Industrial solvent cleaning" means operations performed using a liquid that contains any VOC, or combination of VOCs, which is used to clean parts, tools, machinery, equipment and work areas. Cleaning operations include, but are not limited to, spraying, wiping, flushing, and purging.

"Open top vapor degreaser" means the batch process of cleaning and removing soils from metal surfaces by condensing low solvent vapor on the colder metal parts.

"Separation operation" means any process that separates a mixture of compounds and solvents into two or more components. Specific mechanisms include extraction, centrifugation, filtration, and crystallization.

"Solvent metal cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open top vapor degreasers, or conveyorized degreasing.

R307-335-4. Cold Cleaning Facilities.

No owner or operator shall operate a degreasing or solvent cleaning operation unless conditions in R307-335-4(1) through (7) are met.

(1) A cover shall be installed which shall remain closed except during actual loading, unloading or handling of parts in cleaner. The cover shall be designed so that it can be easily operated with one hand if:

(a) The volatility of the solvent is greater than 2 kPa (15 mm Hg or 0.3 psi) measured at 38 degrees C (100 degrees F),

(b) The solvent is agitated, or

(c) The solvent is heated.

(2) An internal draining rack for cleaned parts shall be installed on which parts shall be drained until all dripping ceases. If the volatility of the solvent is greater than 4.3 kPa (32 mm Hg at 38 degrees C (100 degrees F)), the drainage facility must be internal, so that parts are enclosed under the cover while draining. The drainage facility may be external for applications where an internal type cannot fit into the cleaning system.

(3) Waste or used solvent shall be stored in covered containers.

(4) Tanks, containers and all associated equipment shall be maintained in good operating condition, and leaks shall be repaired immediately or the degreaser shall be shutdown.

(5) Written procedures for the operation and maintenance of the degreasing or solvent cleaning equipment shall be permanently posted in an accessible and conspicuous location near the equipment.

(6) If the solvent volatility is greater than 4.3 kPa (33 mm Hg or 0.6 psi) measured at 38 degrees C (100 degrees F), or if solvent is heated above 50 degrees C (120 degrees F), then one of the following control devices shall be used:

(a) Freeboard that gives a freeboard ratio greater than 0.7;

(b) Water cover if the solvent is insoluble in and heavier than water); or

(c) Other systems of equivalent control, such as a refrigerated chiller or carbon adsorption.

(7) If used, the solvent spray shall be a solid fluid stream at a pressure that does not cause excessive splashing and may not be a fine, atomized or shower type spray.

R307-335-5. Open Top Vapor Degreasers.

Owners or operators of open top vapor degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5),

(1) Equip the vapor degreaser with a cover that can be opened and closed without disturbing the vapor zone. The cover shall be closed except when processing work loads through the degreaser;

(2) Install one of the following control devices:

(a) Equipment necessary to sustain:

(i) A freeboard ratio greater than or equal to 0.75, and

(ii) A powered cover if the degreaser opening is greater than 1 square meter (10.8 square feet),

(b) Refrigerated chiller,

(c) Enclosed design (cover or door opens only when the dry part is actually entering or exiting the degreaser),

(d) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when cover is open and exhausting less than 25 parts per million of solvent averaged over one complete adsorption cycle;

(3) Minimize solvent carryout by:

(a) Racking parts to allow complete drainage,

(b) Moving parts in and out of the degreaser at less than 3.3 meters per minute (11 feet per minute),

(c) Holding the parts in the vapor zone at least 30 seconds or until condensation ceases,

(d) Tipping out any pool of solvent on the cleaned parts before removal, and

(e) Allowing the parts to dry within the degreaser for at least 15 seconds or until visibly dry.

(4) Spray parts only in or below the vapor level;

(5) Not use ventilation fans near the degreaser opening, nor provide exhaust ventilation exceeding 20 cubic meters per minute per square meter (65 cubic feet per minute per square foot) in degreaser open area, unless necessary to meet state and federal occupational, health, and safety requirements.

(6) Not degrease porous or absorbent materials, such as cloth, leather, wood or rope;

(7) Not allow work loads to occupy more than half of the degreaser's open top area;

(8) Ensure that solvent is not visually detectable in water exiting the water separator;

(9) Install safety switches on the following:

(a) Condenser flow switch and thermostat (shuts off sump heat if condenser coolant is either not circulating or too warm); and

(b) Spray switch (shuts off spray pump if the vapor level drops excessively, i.e., greater than 10 cm (4 inches).

(10) Open top vapor degreasers with an open area smaller than one square meter (10.8 square feet) are exempt from R307-335-5(2)(b) and (d).

R307-335-6. Conveyorized Degreasers.

Owners and operators of conveyorized degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5) and R307-335-5(5):

(1) Install one of the following control devices for conveyorized degreasers with an air/vapor interface equal to or greater than two square meters (21.5 square feet):

(a) Refrigerated chiller; or

(b) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when downtime covers are open, and exhausting less than 25 parts per million of solvent, by volume, averaged over a complete adsorption cycle.

(2) Equip the cleaner with equipment, such as a drying tunnel or rotating (tumbling) basket, sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

(3) Provide downtime covers for closing off the entrance and exit during shutdown hours. Ensure that down-time cover is placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down and is removed just before they are started up.

(4) Minimize carryout emissions by racking parts for best drainage and maintaining the vertical conveyor speed at less than 3.3 meters per minute (11 feet per minute).

(5) Minimize openings: Entrances and exits should silhouette work loads so that the average clearance (between parts and the edge of the degreaser opening) is either less than 10 cm (4 inches) or less than 10% of the width of the opening.

(6) Install safety switches on the following:

(a) Condenser flow switch and thermostat - shuts off sump heat if coolant is either not circulating or too warm;

(b) Spray switch - shuts off spray pump or conveyor if the vapor level drops excessively, i.e., greater than 10 cm or (4 inches); and

(c) Vapor level control thermostat - shuts off sump level if vapor level rises too high.

(7) Ensure that solvent is not visibly detectable in the water exiting the water separator.

R307-335-7. Industrial Solvent Cleaning.

(1) Exemptions. The requirements of R307-335-7 do not apply to aerospace, wood furniture, shipbuilding and repair, flat wood paneling, large appliance, metal furniture, paper film and foil, plastic parts, miscellaneous metal parts coatings and light autobody and truck assembly coatings, flexible packaging, lithographic and letterpress printing materials, fiberglass boat manufacturing materials, and operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces.

(2) Operators of industrial solvent cleaning that emit 15 pounds of VOCs or more per day from industrial solvent cleaning operations, shall reduce VOC emissions from the use, handling, storage, and disposal of cleaning solvents and shop towels by implementing the following work practices:

(a) Covering open containers; and

(b) Storing used applicators and shop towels in closed fire proof containers, and

(c) Limiting VOC emissions by either:

(i) Using solvents (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) with a VOC limit in Table 1; or

(ii) Installing an emission control system designed to have an overall capture and control efficiency of at least 85%.

TABLE 1
Solvent Cleaning VOC Limits

Solvent Cleaning Category	VOC Limit (lb/gal)
Coatings, adhesives and ink manufacturing	4.2
Electronic parts and components	4.2
General miscellaneous cleaning	2.5
Medical devices and pharmaceutical	
Tools, equipment and machinery	6.7
General surface cleaning	5.0
Screening printing operations	4.2
Semiconductor tools, maintenance and equipment Cleaning	6.7

R307-335-8. Add-on Emission Control Systems Operations.

(1) Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-335-7(2)(c)(ii).

(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-335-7. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

R307-335-9. Recordkeeping.

The owner or operator shall maintain, for a minimum of two years, records of the solvent VOC content applied and the physical characteristics that demonstrate compliance with R307-335-7(2).

KEY: air pollution, degreasing, solvent cleaning
December 1, 2014 19-2-104(1)(a)
Notice of Continuation January 27, 2017

R307. Environmental Quality, Air Quality.
R307-341. Ozone Nonattainment and Maintenance Areas: Cutback Asphalt.
R307-341-1. Purpose.

This rule establishes reasonably achievable control technology (RACT) requirements for the use or application of cutback asphalt in ozone nonattainment and maintenance areas.

R307-341-2. Applicability.

R307-341 applies to any person who uses or applies asphalt in any ozone nonattainment or maintenance area.

R307-341-3. Definitions.

The following additional definitions apply to R307-341:

"Asphalt or Asphalt Cement" means the dark brown to black cementitious material, either solid, semisolid or liquid in consistency, of which the main constituents are bitumens that occur naturally or as a residue of petroleum refining.

"Asphalt Concrete" means a waterproof and durable paving material composed of dried aggregate that is evenly coated with hot asphalt cement.

"Cutback Asphalt" means any asphalt that has been liquified by blending with petroleum solvents (diluents) or, in the case of some slow cure asphalts (road oils), which have been produced directly from the distillation of petroleum.

"Emulsified Asphalt" means asphalt emulsions produced by combining asphalt with water that contains an emulsifying agent.

"Patch Mix" means a mixture of an asphalt binder and aggregate in which cutback or emulsified asphalts are used either as sprayed liquid or as a binder.

"Penetrating Prime Coat" means an application of low-viscosity liquid asphalt to an absorbent surface in order to prepare it for paving with asphaltic concrete.

R307-341-4. Limitations on Use of Cutback Asphalt.

No person shall cause, allow, or permit the use or application of cutback asphalt, or emulsified asphalt containing more than 7 percent oil distillate, as determined by ASTM distillation test D-244, except as provided below:

(1) Where the use or application commences on or after October 1 of any year and such use or application is completed by April 30 of the following year;

(2) Where long-life (longer than 1 month) stockpile storage of patch mix is demonstrated to the director to be necessary;

(3) Where the asphalt is to be used solely as a penetrating prime coat;

(4) Where the user can demonstrate that there are no emissions of volatile organic compounds from the asphalt under conditions of normal use;

(5) Where the use or application is for the paving of parking lots smaller than 300 parking stalls.

R307-341-5. Recordkeeping.

Any person subject to R307-341 shall keep records for at least two years of the types and amounts of cutback or emulsified asphalt used, the amounts of solvents added, and the location where the asphalt is applied. The records shall be made available to the director upon request.

R307-341-6. Compliance Schedule.

All sources within any newly designated nonattainment area for ozone shall be in compliance with this rule within 180 days of the effective date of designation to nonattainment.

KEY: air pollution, emission controls, asphalt, solvent
January 16, 2007 19-2-104(1)(a)
Notice of Continuation January 27, 2017

R307. Environmental Quality, Air Quality.
R307-343. Emissions Standards for Wood Furniture Manufacturing Operations.
R307-343-1. Purpose.

The purpose of R307-343 is to limit volatile organic compound (VOC) emissions from wood furniture manufacturing.

R307-343-2. Applicability.

R307-343 applies to wood furniture manufacturing operations, including related cleaning activities, that have the potential to emit 2.7 tons or more per year of VOCs and that are located in Box Elder, Cache, Davis, Salt Lake, Utah, Tooele, and Weber counties.

R307-343-3. Definitions.

The following additional definitions apply to R307-343:

"Affected source" means a wood furniture manufacturing source that meets the criteria in R307-343-2.

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Coating" means a protective, decorative, or functional material applied in a thin layer to a surface. Such materials may include paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, inks, and temporary protective coatings.

"Compliant coating" means a finishing material or strippable booth coating that meets the emission limits specified in R307-343-4(1).

"Control system" means the combination of capture and control devices used to reduce emissions to the atmosphere.

"Conventional Air Spray" means a spray coating method in which the coating is atomized by mixing it with compressed air at an air pressure greater than ten pounds per square inch (gauge) at the point of atomization. Airless, air assisted airless spray technologies, and electrostatic spray technology are not considered conventional air spray.

"Finishing material" means a coating used in the wood furniture industry, including basecoats, stains, washcoats, sealers, and topcoats.

"Finishing Operation" means those activities in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

"Sealer" means a finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. A washcoat used to optimize aesthetics is not a sealer.

"Solids" means the part of the coating that remains after the coating is dried or cured; solids content is determined using data from EPA Method 24.

"Stain" means any color coat having a solids content by weight of no more than 8.0% that is applied in single or multiple coats directly to the substrate, including nongrain raising stains, equalizer stains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

"Topcoat" means the last film-building finishing material applied in a finishing system. Non-permanent final finishes are not topcoats.

"Touch-up and Repair" means the application of finishing materials to cover minor finishing imperfections.

"Washcoat" means a transparent special purpose coating having a solids content by weight of 12.0% or less that is applied over initial stains to protect and control color and to stiffen the wood fibers in order to aid sanding.

"Washoff operations" means those operations in which organic solvent is used to remove coating from a substrate.

"Wood furniture" means any product made of wood, a wood product such as rattan or wicker, or an engineered wood product such as particleboard that is manufactured under any of the following standard industrial classification codes: 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, 2599, or 5712.

"Wood furniture manufacturing operations" means the finishing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

R307-343-4. VOC Content Limits.

(1) Each affected source subject to R307-343 shall limit VOC emissions by:

(a) Using the compliant coating method as described in R307-343-4(1)(a)(i) or using the control system method as described in R307-343-4(1)(a)(ii).

(i) Compliant coating method is the use of the topcoats or topcoat/sealer combinations in Table 1:

TABLE 1

Compliant Coating VOC Limitations
(values in pounds VOC per pound of solids, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

COATING CATEGORY	VOC Content Limitations	
	Effective Through December 31,2014	Effective Beginning January 1, 2015
Topcoats	0.8	0.4
Topcoat/Sealer combination		
Topcoat	1.8	0.9
Sealer	1.9	0.9
Acid-cured, alkyd amino topcoat/sealer combinations		
Acid-cured, alkyd amino topcoat	2.0	1.0
Acid-cured, alkyd amino vinyl Sealer	2.3	1.2

(ii) Control system method is the use of a VOC control system achieving a 85% or greater emissions reduction.

(b) Using strippable spray booth coatings that contain no greater than 0.8 pounds VOC per pound solids as applied.

(c) Using closed containers for the storing of finishing, gluing, cleaning and washoff materials.

R307-343-5. Application Equipment Requirements.

(1) All coatings shall be applied using equipment having a minimum 65% transfer efficiency, except as allowed under R307-343-5(3) and operated according to the equipment manufacturer specifications. Equipment meeting the transfer efficiency requirement includes:

(a) Brush, dip, or roll coating;

(b) Electrostatic application; and

(c) High volume, low pressure (HVLP) spray equipment.

(2) Other coating application methods that achieve transfer efficiency equivalent to HVLP or electrostatic spray application methods may be used.

(3) Conventional air spray methods may be used under the following circumstances:

(a) To apply finishing materials that have no greater than 1.0 pound of VOC per pound of solids, as applied;

(b) For touch-up and repair under the following circumstances:

(i) The touchup and repair occurs after completion of the finishing operation; or

(ii) The touchup and repair occurs after the application of stain and before the application of any other type of finishing material, and the materials used for touchup and repair are applied from a container that has a volume of no more than 2.0

gallons;

(c) When the spray gun is aimed and triggered automatically, not manually;

(d) When the emissions from the finishing application station are directed to a control device;

(e) When the conventional air gun is used to apply finishing materials and the cumulative total usage of that finishing material is no more than 10% of the total gallons of finishing material used during the calendar year; or

(f) When the conventional air gun is used to apply stain on a part for which it is technically or economically infeasible to use any other spray application technology. The following criteria shall be used, either independently or in combination, to support the affected source's claim of technical or economic infeasibility:

(i) The production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or

(ii) The excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.

R307-343-6. Add-on Controls Systems Operations.

(1) The owner or operator shall install and maintain an incinerator, carbon adsorption, or any other add-on emission control system, provided that the emission control system is operated and maintained in accordance with the manufacturer recommendations in order to maintain at least 85% capture and control efficiency. Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-343-6(1).

(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-343-6. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

R307-343-7. Work Practices and Recordkeeping.

(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions from fugitive type sources. Control techniques and work practices shall include:

(a) Storing all VOC-containing coatings, thinners, and coating-related waste materials in closed containers;

(b) Ensuring that mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials;

(c) Minimizing spills of VOC-containing coatings, thinners, and coating-related waste materials; and

(d) Conveying VOC-containing coatings, thinners, and coating-related waste materials from one location to another in closed containers or pipes.

(2) The work practices for cleaning materials shall be implemented at all times to reduce VOC emissions from fugitive type sources. The work practices shall include:

(a) Storing all VOC-containing cleaning materials and used shop towels in closed containers;

(b) Ensuring that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials;

(c) Minimizing spills of VOC-containing cleaning materials;

(d) Conveying VOC-containing cleaning materials from one location to another in closed containers or pipes; and

(e) Minimizing VOC emissions from cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(3) All persons shall perform solvent cleaning operations with cleaning material having VOC content (excluding compounds not classified as VOC) of 0.21 pounds per gallon or less.

(4) For each calendar year, all sources subject to R307-343 shall maintain records demonstrating compliance with R307-343-4, R307-343-5 and R307-343-7.

(a) Records shall include, but shall not be limited to, inventory and product data sheets for all coatings and solvents subject to R307-343.

(b) These records shall be made available to the director upon request.

KEY: air pollution, wood furniture, coatings
December 1, 2014 19-2-104(1)(a)
Notice of Continuation January 27, 2017 19-2-104(3)(e)

R311. Environmental Quality, Environmental Response and Remediation.
R311-203. Underground Storage Tanks: Technical Standards.
R311-203-1. Definitions.

Definitions are found in Rule R311-200.

R311-203-2. Notification.

(a) The owner or operator of an underground storage tank shall notify the Director whenever:

(1) new USTs are brought into use;

(2) the owner or operator changes;

(3) changes are made to the tank or piping system; and

(4) release detection, corrosion protection, or spill or overfill prevention systems are installed, changed or upgraded.

(b) All notifications shall be submitted on the current approved notification form.

(c) Notifications submitted to meet the requirements of R311-203-2(a)(1) through (4) shall be submitted within 30 days of the completion of the work or the change of ownership.

(d) To satisfy the requirement of Subsection 19-6-407(1)(c) the certified installer shall:

(1) complete the appropriate section of the notification form to be submitted by the owner or operator, and ensure that the notification form is submitted by the owner or operator within 30 days of completion of the installation; or

(2) provide separate notification to the Director within 60 days of the completion of the installation.

R311-203-3. New Installations, Permits.

(a) Certified UST installers shall notify the Director at least 10 days, or another time period approved by the Director, before commencing any of the following activities:

(1) the installation of a full UST system or tank only;

(2) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;

(3) the internal lining of a previously-existing tank;

(4) the installation of a cathodic protection system on one or more previously-existing tanks at a facility;

(5) the installation of a bladder in a tank;

(6) any retro-fit, replacement, or installation that requires the cutting of a manway into the tank;

(7) the installation of a spill prevention or overfill prevention device;

(8) the installation of a leak detection monitoring system; and

(9) the installation of a containment sump or under-dispenser containment.

(b) The UST installation company shall submit to the Director an UST installation permit fee of $200 when any of the activities listed in R311-203-3(a)(1) through (6) is performed on an UST system that has not qualified for a certificate of compliance before the commencement of the work.

(c) The fees assessed under 19-6-411(2)(a)(i) shall be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date. Installations for which the fee assessed under 19-6-411(2)(a)(ii) and R311-203-3(c) is charged shall count toward the total installations for the 12-month period.

(d) For the purposes of Subsections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(d), an installation shall be considered complete when:

(1) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance; or

(2) in the case of installation of the components listed in Subsections R311-203-3(a)(3) through (a)(6), the new installation is functional and the UST holds a regulated substance and is operational.

(e) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the Director of the change. When additions are made, the UST installation permit fee shall not be increased unless the original UST installation permit fee would have been higher had the addition been considered at the time the original fee was determined.

(f) The number of UST installation companies performing work on a particular installation shall not be a factor in determining the UST installation permit fee for that installation. However, each installation company shall identify itself at the time the UST installation permit fee is paid.

(g) When a new UST system, tank only, product piping only, or new cathodic protection system is installed, the owner or operator shall submit to the Director an as-built drawing, to scale, that meets the requirements of R311-200-1(b)(2).

R311-203-4. Underground Storage Tank Registration Fee.

(a) Registration fees shall be assessed by the Department against all tanks which are not permanently closed for the entire fiscal year, and shall be billed per facility.

(b) Registration fees shall be due on July 1 of the fiscal year for which the assessment is made, or, for underground storage tanks brought into use after the beginning of the fiscal year, underground storage tank registration fees shall be due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

(c) The Director may waive all or part of the penalty assessed under Subsection 19-6-408(5) if no fuel has been dispensed from the tank on or after July 1, 1991 and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the Director.

(d) The Director shall issue a certificate of registration to owners or operators for individual underground storage tanks at a facility if:

(1) the tanks are in use or are temporarily closed according to 40 CFR Part 280 Subpart G; and,

(2) the underground storage tank registration fee has been paid.

(e) Pursuant to 19-6-408(5)(c), all past due registration fees, late payment penalties and interest must be paid before the Director may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility. However, the Director may decline active collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes the underground storage tanks within one year of becoming the new owner or operator of the facility.

(f) An underground storage tank will be assessed the higher registration fee established under Section 63J-1-504 if it is found to be out of significant operational compliance with leak prevention or leak detection requirements during an inspection, and remains out of compliance for six months or greater following the initial inspection. The higher registration fee shall be due July 1 following the documented six-month period of non-compliance. A tank will be out of significant operational compliance if it fails to meet any of the significant operational compliance measures stated in the EPA compliance measures matrices incorporated by Subsection R311-206-10(b)(1).

(g) When the Director is notified of the existence of a previously un-registered regulated UST, the Director shall assess the registration fee for the current fiscal year. If the UST is properly permanently closed within 90 days of the notification

of the existence of the UST, the Director may decline active collection of past-due registration fees, late payment penalties, and interest for previous fiscal years.

R311-203-5. UST Testing Requirements.

(a) Tank tightness testing. The testing method must be able to test the UST system at the maximum level that could contain regulated substances. Tanks with overfill prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overfill device.

(b) Spill prevention equipment. An individual who conducts a test of spill prevention equipment to meet the requirements of 40 CFR 280.35(a)(1)(ii) shall report the test results using:

(1) the form "Utah Spill Prevention Test", or

(2) the form "Appendix C-3 Spill Bucket Integrity Testing Hydrostatic Test Method Single and Double-Walled Vacuum Test Method", found in PEI RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities", or

(3) another form approved by the Director.

(c) Containment sump testing. An individual who conducts a test of a containment sump used for interstitial monitoring to meet the requirements of 40 CFR 280.35(a)(1)(ii) or a test of a piping containment sump or under-dispenser containment to meet the requirements of R311-206-11 shall report the test results using:

(1) the form "Utah Containment Sump Test", or

(2) the form "Appendix C-4 Containment Sump Integrity Testing Hydrostatic Testing Method", found in PEI RP1200, or

(3) another form approved by the Director.

(d) When a sump sensor is used as an automatic line leak detector, the secondary containment sump shall be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the Director. The sensor shall be located as close as is practicable to the lowest portion of the sump.

(e) Cathodic protection testing. Cathodic protection tests shall meet the inspection criteria outlined in 40 CFR 280.31(b), or other criteria approved by the Director. The tester who performs the test shall provide the following information: location of at least three test points per tank, location of one remote test point for galvanic systems, test results in volts or millivolts, pass/fail determination for each tank, line, flex connector, or other UST system component tested, the criteria by which the pass/fail determination is made, and a site plat showing locations of test points. A re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

(f) UST testers performing tank and line tightness testing shall include the following as part of the test report: pass/fail determination for each tank or line tested, the measured leak rate, the test duration, the product level for tank tests, the pressure used for pressure tests, the type of test, and the test equipment used.

R311-203-6. Secondary Containment and Under-Dispenser Containment.

(a) Secondary containment for tanks and piping.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all tanks and product piping that are installed as part of an underground storage tank system after October 1, 2008 and before January 1, 2017 shall have secondary containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The secondary containment installed under Subsection (a) shall meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping. Monthly monitoring shall meet the requirements of 40 CFR 280.43(g).

(3) Containment sumps for piping that is installed under Subsection (a) shall be required:

(A) at the submersible pump or other location where the piping connects to the tank;

(B) where the piping connects to a dispenser, or otherwise goes above-ground; and

(C) where double-walled piping that is required under Subsection (a) connects with existing piping.

(4) Containment sumps for piping that is installed under Subsection (a) shall:

(A) contain submersible pumps, check valves, unburied risers, flexible connectors, and other transitional components that connect the piping to the tank, dispenser, or existing piping; and

(B) meet the requirements of Subsections (b)(2)(A) through (C).

(5) In the case of a replacement of tank or piping, only the portion of the UST system being replaced shall be subject to the requirements of Subsection (a). If less than 100 percent of the piping from a tank to a dispenser is replaced, the requirements of Subsection (a) shall apply to all new product piping that is installed. The closure requirements of R311-205 shall apply to all product piping that is taken out of service. When new piping is connected to existing piping that is not taken out of service, the connection between the new and existing piping shall be secondarily contained, and shall be monitored for releases according to 40 CFR 280.43(g).

(6) The requirements of Subsection (a) shall not apply to:

(A) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2)(i) through (v), or

(B) piping that connects two or more tanks to create a siphon system.

(7) The requirements of Subsection (a) shall apply to emergency generator USTs installed after October 1, 2008.

(b) Under-dispenser containment.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all new motor fuel dispenser systems installed after October 1, 2008 and before January 1, 2017, and connected to an underground storage tank, shall have under-dispenser containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The under-dispenser containment shall:

(A) be liquid-tight on its sides, bottom, and at all penetrations;

(B) be compatible with the substance conveyed by the piping; and

(C) allow for visual inspection and access to the components in the containment system, or shall be continuously monitored for the presence of liquids.

(3) If an existing dispenser is replaced, the requirements of Subsection (b) shall apply to the new dispenser if any equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes unburied flexible connectors, risers, and other transitional components that are beneath the dispenser and connect the dispenser to the product piping.

(c) The requirements of Subsections (a) and (b) shall not apply if the installation is located more than 1000 feet from an existing community water system or an existing potable drinking water well.

(1) The UST owner or operator shall provide to the Director documentation to show that the requirements of Subsections (a) and (b) to not apply to the installation. The documentation shall be provided at least 60 days before the

beginning of the installation, and shall include:

(A) a detailed to-scale map of the proposed installation that demonstrates that no part of the installation is within 1000 feet of any community water system, potable drinking water well, or any well the owner or operator plans to install at the facility, and

(B) a certified statement by the owner or operator explaining who researched the existence of a community water system or potable drinking water well, how the research was conducted, and how the proposed installation qualifies for an exemption from the requirements of Subsections (a) and (b).

(d) To determine whether the requirements of Subsections (a) and (b) apply, the distance from the UST installation to an existing community water system or existing potable drinking water well shall be measured from the closest part of the new underground tank, piping, or motor fuel dispenser system to:

(1) the closest part of the nearest community water system, including:

(A) the location of the wellheads for groundwater and/or the location of the intake points for surface water;

(B) water lines, processing tanks, and water storage tanks; and

(C) water distribution/service lines under the control of the community water system operator, or

(2) the wellhead of the nearest existing potable drinking water well.

(e) If a new underground storage tank facility is installed, and is not within 1000 feet of an existing community water system or an existing potable drinking water well, the requirements of Subsections (a) and (b) apply if the owner or operator installs a potable drinking water well at the facility that is within 1000 feet of the underground tanks, piping, or motor fuel dispenser system, regardless of the sequence of installation of the UST system, dispenser system, and well.

(f) To meet the requirements of 40 CFR 280.20, all tanks and product piping that are installed or replaced as part of an underground storage tank system on or after January 1, 2017 shall be secondarily contained and use interstitial monitoring in accordance with 40 CFR 280.43(g).

R311-203-7. Operator Inspections.

(a) Owners and operators shall perform periodic inspections in accordance with 40 CFR 280.36. Inspections shall be conducted by or under the direction of the designated Class B operator. The Class B operator shall ensure that documentation of each inspection is kept and made available for review by the Director.

(b) The individual who conducts inspections to meet the requirements of 40 CFR 280.36(a)(1) or (a)(3) shall use the form "UST Operator Inspection- Utah" or another form approved by the Director.

(c) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and R311-204-4 shall have an annual operator inspection.

(d) An owner or operator who conducts visual checks of tank top containment sumps and under dispenser containment sumps for compliance with piping leak detection in accordance with 40 CFR 280.43(g) shall conduct the visual checks monthly and report the results on the operator inspection form.

R311-203-8. Unattended Facilities.

(a) A facility that normally has no employee or other responsible person on site, or is open to dispense fuel at times when no employee or responsible person is on site, shall have:

(1) a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders, and

(2) an emergency shutoff device in a readily accessible location, if the facility dispenses fuel.

KEY: fees, hazardous substances, petroleum, underground storage tanks

January 3, 2017 19-6-105

Notice of Continuation April 10, 2012 19-6-403

19-6-408

R311. Environmental Quality, Environmental Response and Remediation.
R311-401. Utah Hazardous Substances Priority List.
R311-401-1. Definitions.

The definitions in Section 19-6-302 are adopted and incorporated by reference as part of this rule.

R311-401-2. Hazardous Substances Priority List.

Pursuant to Section 19-6-311 of the Utah Hazardous Substances Mitigation Fund Act the hazardous substances priority list is hereby established as presented below. The listed sites are eligible to be addressed under the authority of Section 19-6-311 et seq. U.C.A. 1953 as amended.

(a) National Priority List Sites. The Federal Register publication dates are indicated below.

TABLE

SITE NUMBER	SITE NAME	FEDERAL REGISTER PUBLICATION DATE
1	Hill Air Force Base	July 22, 1987
2	Monticello Vicinity Properties	June 10, 1986
3	Ogden Defense Depot	July 22, 1987
4	Portland Cement Sites 2 and 3	June 10, 1986
5	Rose Park Sludge Pit	September 8, 1983
6	Utah Power and Light, American Barrel	October 4, 1989
7	Sharon Steel	August 30, 1990
8	Tooele Army Depot, North	August 30, 1990
9	Monticello Mill Site	November 21, 1989
10	Midvale Slag	February 11, 1991
11	Wasatch Chemical, Lot 6	February 11, 1991
12	Petrochem Recycling Corp./ Ekotek Plant	October 14, 1992
13	Jacobs Smelter	February 4, 2000
14	Intermountain Waste Oil Refinery	May 11, 2000
15	International Smelting and Refining	July 27, 2000
16	Bountiful/Woods Cross 5th South PCE Plume	September 13, 2001
17	Davenport and Flagstaff Smelters	April 30, 2003
18	Eureka Mills	September 5, 2002
19	Five Points PCE Plume	September 19, 2007
20	U.S. Magnesium	November 4, 2009

(b) Proposed National Priority List Sites. The Federal Register publication dates are indicated below.

TABLE

SITE NUMBER	SITE NAME	FEDERAL REGISTER PUBLICATION DATE
1	Richardson Flat Tailings	February 7, 1992
2	Murray Smelter	January 18, 1994

(c) Scored Sites
Reserved.

KEY: hazardous substances, hazardous substances priority list
July 20, 2012 19-6-311
Notice of Continuation January 20, 2017

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-15. Standards for Protection Against Radiation.
R313-15-1. Purpose, Authority and Scope.

(1) Rule R313-15 establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses issued by the Director. These rules are issued pursuant to Subsections 19-3-104(4) and 19-3-104(7).

(2) The requirements of Rule R313-15 are designed to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in Rule R313-15. However, nothing in Rule R313-15 shall be construed as limiting actions that may be necessary to protect health and safety.

(3) Except as specifically provided in other sections of these rules, Rule R313-15 applies to persons licensed or registered by the Director to receive, possess, use, transfer, or dispose of sources of radiation. The limits in Rule R313-15 do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with Rule R313-32 (incorporating 10 CFR 35.75 by reference), or to exposure from voluntary participation in medical research programs.

R313-15-2. Definitions.

"Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

"Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

"Assigned protection factor" (APF) means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

"Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

"Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than ten days, for Class W, Weeks, from ten to 100 days , and for Class Y, Years, of greater than 100 days. For purposes of these rules, "lung class" and "inhalation class" are equivalent terms.

"Constraint (dose constraint)" in accordance with 10 CFR 20.1003, (2010), means a value above which specified licensee actions are required.

"Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

"Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

"Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

"Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

"Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

"Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

"Filtering facepiece" (dust mask) means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

"Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

"Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

"Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

"Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

"Inhalation class", refer to "Class".

"Labeled package" means a package labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in U.S. Department of Transportation regulations 49 CFR 172.403 and 49 CFR 172.436 through 440, (2009). Labeling of packages containing radioactive materials is required by the U.S. Department of Transportation if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by U.S. Department of Transportation regulations 49 CFR 173.403 and 49 CFR 173.421 through 424, (2009).

"Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

"Lung class", refer to "Class".

"Nationally tracked source" is a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in Appendix E of 10 CFR 20.1001 to 20.2402 (2010), which is incorporated by reference. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for

disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

"Negative pressure respirator" (tight fitting) means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

"Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, "deterministic effect" is an equivalent term.

"Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

"Positive pressure respirator" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

"Powered air-purifying respirator" (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

"Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

"Qualitative fit test" (QLFT) means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

"Quantitative fit test" (QNFT) means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

"Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

"Reference Man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of the Reference Man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

"Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

"Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

"Self-contained breathing apparatus" (SCBA) means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

"Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these rules, "probabilistic effect" is an equivalent term.

"Supplied-air respirator" (SAR) or airline respirator means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

"Tight-fitting facepiece" means a respiratory inlet covering that forms a complete seal with the face.

"User seal check" (fit check) means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a radiation source or one meter from any surface that the radiation penetrates.

"Weighting factor" w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

TABLE

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30(1)
Whole Body	1.00(2)

(1) 0.30 results from 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.
(2) For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

R313-15-3. Implementation.

(1) Any existing license or registration condition that is more restrictive than Rule R313-15 remains in force until there is an amendment or renewal of the license or registration.

(2) If a license or registration condition exempts a licensee or registrant from a provision of Rule R313-15 in effect on or before January 1, 1994, it also exempts the licensee or registrant from the corresponding provision of Rule R313-15.

(3) If a license or registration condition cites provisions of Rule R313-15 in effect prior to January 1, 1994, which do not correspond to any provisions of Rule R313-15, the license or registration condition remains in force until there is an amendment or renewal of the license or registration that modifies or removes this condition.

R313-15-101. Radiation Protection Programs.

(1) Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of Rule R313-15. See Section R313-15-1102 for recordkeeping requirements relating to these programs.

(2) The licensee or registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).

(3) The licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation.

(4) To implement the ALARA requirements of Subsection R313-15-101(2), and notwithstanding the requirements in Section R313-15-301, a constraint on air emissions of radioactive material to the environment, excluding radon-222

and its decay products, shall be established by licensees or registrants such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 0.1 mSv (0.01 rem) per year from these emissions. If a licensee or registrant subject to this requirement exceeds this dose constraint, the licensee or registrant shall report the exceedance as provided in Section R313-15-1203 and promptly take appropriate corrective action to ensure against recurrence.

R313-15-201. Occupational Dose Limits for Adults.

(1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to Section R313-15-206, to the following dose limits:

(a) An annual limit, which is the more limiting of:

(i) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or

(ii) The sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).

(b) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities which are:

(i) A lens dose equivalent of 0.15 Sv (15 rem), and

(ii) A shallow dose equivalent of 0.50 Sv (50 rem) to the skin of the whole body or to the skin of any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See Subsections R313-15-206(5)(a) and R313-15-206(5)(b).

(3) When the external exposure is determined by measurement with an external personal monitoring device, the deep dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the Director, U.S. Nuclear Regulatory Commission, or an Agreement State. The assigned deep dose equivalent must be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent must be the dose averaged over the contiguous ten square centimeters of skin receiving the highest exposure.

(a) The deep dose equivalent, lens dose equivalent and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable; or

(b) When a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in Subsection R313-15-502(1)(d), the effective dose equivalent for external radiation shall be determined as follows:

(i) When only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in Subsection R313-15-201(1), the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation; or

(ii) When individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See Section R313-15-1107.

(5) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to ten milligrams in a week in consideration of chemical toxicity. See footnote 3, of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(6) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See Subsection R313-15-205(5).

R313-15-202. Compliance with Requirements for Summation of External and Internal Doses.

(1) If the licensee or registrant is required to monitor pursuant to both Subsections R313-15-502(1) and R313-15-502(2), the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee or registrant is required to monitor only pursuant to Subsection R313-15-502(1) or only pursuant to Subsection R313-15-502(2), then summation is not required to demonstrate compliance with the dose limits. The licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses pursuant to Subsections R313-15-202(2), R313-15-202(3) and R313-15-202(4). The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(2) Intake by Inhalation. If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(a) The sum of the fractions of the inhalation ALI for each radionuclide, or

(b) The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000, or

(c) The sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T, and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than ten percent of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

(3) Intake by Oral Ingestion. If the occupationally exposed individual receives an intake of radionuclides by oral ingestion greater than ten percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(4) Intake through Wounds or Absorption through Skin. The licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for pursuant to Subsection R313-15-202(4).

R313-15-203. Determination of External Dose from Airborne Radioactive Material.

(1) Licensees or registrants shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, lens dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See footnotes 1 and 2 of Appendix B of 10

CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(2) Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

R313-15-204. Determination of Internal Exposure.

(1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee or registrant shall, when required pursuant to Section R313-15-502, take suitable and timely measurements of:

(a) Concentrations of radioactive materials in air in work areas; or

(b) Quantities of radionuclides in the body; or

(c) Quantities of radionuclides excreted from the body; or

(d) Combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in Section R313-15-703, or the assessment of intake is based on bioassays, the licensee or registrant shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee or registrant may:

(a) Use that information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document that information in the individual's record; and

(b) Upon prior approval of the Director, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(4) If the licensee or registrant chooses to assess intakes of Class Y material using the measurements given in Subsections R313-15-204(1)(b) or R313-15-204(1)(c), the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required by Section R313-15-1202 or Section R313-15-1203. This delay permits the licensee or registrant to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(a) The sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, for each radionuclide in the mixture; or

(b) The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if:

(a) The licensee or registrant uses the total activity of the mixture in demonstrating compliance with the dose limits in Section R313-15-201 and in complying with the monitoring requirements in Subsection R313-15-502(2), and

(b) The concentration of any radionuclide disregarded is less than ten percent of its DAC, and

(c) The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30 percent.

(8) When determining the committed effective dose equivalent, the following information may be considered:

(a) In order to calculate the committed effective dose equivalent, the licensee or registrant may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(b) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.50 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), that is, the stochastic ALI, is listed in parentheses in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference. The licensee or registrant may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee or registrant uses the stochastic ALI, the licensee or registrant shall also demonstrate that the limit in Subsection R313-15-201(1)(a)(ii) is met.

R313-15-205. Determination of Prior Occupational Dose.

(1) For each individual likely to receive, in a year, an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall Determine the occupational radiation dose received during the current year; and

(2) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

(a) The internal and external doses from all previous planned special exposures; and

(b) All doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

(3) In complying with the requirements of Subsections R313-15-205(1) or (2), a licensee or registrant may:

(a) Accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year;

(b) Attempt to obtain the records of cumulative occupational radiation dose. A licensee or registrant may accept, as the record of cumulative radiation dose, an up-to-date form DWMRC-05 or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant; and

(c) Obtain reports of the individual's dose equivalents from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, other electronic media or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(4) The licensee or registrant shall record the exposure history, as required by Subsection R313-15-205(1) or (2), on form DWMRC-05, or other clear and legible record, of all the information required on form DWMRC-05. The form or record

shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing form DWMRC-05 or equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on form DWMRC-05 or equivalent indicating the periods of time for which data are not available.

(5) For the purpose of complying with this requirement, licensees or registrants are not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed pursuant to the rules in Rule R313-15 in effect before January 1, 1994. Further, occupational exposure histories obtained and recorded on form DWMRC-05 or equivalent before January 1, 1994, would not have included effective dose equivalent, but may be used in the absence of specific information on the intake of radionuclides by the individual.

(6) If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

(a) In establishing administrative controls under Subsection R313-15-201(6) for the current year, that the allowable dose limit for the individual is reduced by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(b) That the individual is not available for planned special exposures.

(7) The licensee or registrant shall retain the records on form DWMRC-05 or equivalent until the Director terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing form DWMRC-05 or equivalent for three years after the record is made. This includes records required under the standards for protection against radiation in effect prior to January 1, 1994.

R313-15-206. Planned Special Exposures.

A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in Section R313-15-201 provided that each of the following conditions is satisfied:

(1) The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the dose estimated to result from the planned special exposure are unavailable or impractical.

(2) The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(3) Before a planned special exposure, the licensee or registrant ensures that each individual involved is:

(a) Informed of the purpose of the planned operation; and

(b) Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(c) Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(4) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains prior doses as required by Subsection R313-15-205(2) during the lifetime of the individual for each individual involved.

(5) Subject to Subsection R313-15-201(2), the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(a) The numerical values of any of the dose limits in Subsection R313-15-201(1) in any year; and

(b) Five times the annual dose limits in Subsection R313-15-201(1) during the individual's lifetime.

(6) The licensee or registrant maintains records of the conduct of a planned special exposure in accordance with Section R313-15-1106 and submits a written report in accordance with Section R313-15-1204.

(7) The licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to Subsection R313-15-201(1) but shall be included in evaluations required by Subsections R313-15-206(4) and R313-15-206(5).

R313-15-207. Occupational Dose Limits for Minors.

The annual occupational dose limits for minors are ten percent of the annual occupational dose limits specified for adult workers in Section R313-15-201.

R313-15-208. Dose to an Embryo/Fetus.

(1) The licensee or registrant shall ensure that the dose equivalent to the embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed five mSv (0.5 rem). See Section R313-15-1107 for recordkeeping requirements.

(2) The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in Subsection R313-15-208(1).

(3) The dose equivalent to an embryo/fetus is the sum of:

(a) The deep dose equivalent to the declared pregnant woman; and

(b) The dose equivalent resulting from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.

(4) If the dose equivalent to the embryo/fetus is found to have exceeded five mSv (0.5 rem) or is within 0.5 mSv (0.05 rem) of this dose by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with Subsection R313-15-208(1) if the additional dose equivalent to the embryo/fetus does not exceed 0.50 mSv (0.05 rem) during the remainder of the pregnancy.

R313-15-301. Dose Limits for Individual Members of the Public.

(1) Each licensee or registrant shall conduct operations so that:

(a) The total effective dose equivalent to individual members of the public from the licensed or registered operation does not exceed one mSv (0.1 rem) in a year, exclusive of the dose contributions from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released, under Rule R313-32 (incorporating 10 CFR 35.75 by reference), from voluntary participation in medical research programs, and from the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with Section R313-15-1003; and

(b) The dose in any unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with Rule R313-32 (incorporating 10 CFR 35.75 by reference), does not exceed 0.02 mSv (0.002 rem) in any one hour; and

(c) Notwithstanding Subsection R313-15-301(1)(a), a licensee may permit visitors to an individual who cannot be released, under R313-32 (incorporating 10 CFR 35.75 by reference), to receive a radiation dose greater than one mSv (0.1 rem) if:

(i) The radiation dose received does not exceed five mSv (0.5 rem); and

(ii) The authorized user, as defined in R313-32, has determined before the visit that it is appropriate.; and

(d) The total effective dose equivalent to individual members of the public from infrequent exposure to radiation from radiation machines does not exceed 5 mSv (0.5 rem) in a year.

(2) If the licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public continue to apply to those individuals.

(3) A licensee, registrant, or an applicant for a license or registration may apply for prior Director authorization to operate up to an annual dose limit for an individual member of the public of five mSv (0.5 rem). This application shall include the following information:

(a) Demonstration of the need for and the expected duration of operations in excess of the limit in Subsection R313-15-301(1); and

(b) The licensee's or registrant's program to assess and control dose within the five mSv (0.5 rem) annual limit; and

(c) The procedures to be followed to maintain the dose ALARA.

(4) In addition to the requirements of R313-15, a licensee subject to the provisions of the United States Environmental Protection Agency's generally applicable environmental radiation standards in 40 CFR 190 shall comply with those standards.

(5) The Director may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.

R313-15-302. Compliance with Dose Limits for Individual Members of the Public.

(1) The licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in Section R313-15-301.

(2) A licensee or registrant shall show compliance with the annual dose limit in Section R313-15-301 by:

(a) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(b) Demonstrating that:

(i) The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Table II of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; and

(ii) If an individual were continuously present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.50 mSv (0.05 rem) in a year.

(3) Upon approval from the Director, the licensee or registrant may adjust the effluent concentration values in Appendix B, Table II of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as, aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form.

R313-15-401. Radiological Criteria for License Termination - General Provisions.

(1) The criteria in Sections R313-15-401 through R313-15-406 apply to the decommissioning of facilities licensed under Rules R313-22 and R313-25, as well as other facilities subject to the Act. For low-level waste disposal facilities (Rule R313-25), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities.

(2) The criteria in Sections R313-15-401 through R313-15-406 do not apply to sites which:

(a) Have been decommissioned prior to the effective date of the rule in accordance with criteria approved by the Director;

(b) Have previously submitted and received Director approval on a license termination plan or decommissioning plan; or

(c) Submit a sufficient license termination plan or decommissioning plan before the effective date of the rule with criteria approved by the Director.

(3) After a site has been decommissioned and the license terminated in accordance with the criteria in Sections R313-15-401 through R313-15-406, the Director will require additional cleanup only if, based on new information, the Director determines that the criteria in Sections R313-15-401 through R313-15-406 was not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(4) When calculating the total effective dose equivalent to the average member of the critical group, the licensee shall determine the peak annual total effective dose equivalent dose expected within the first 1000 years after decommissioning.

R313-15-402. Radiological Criteria for Unrestricted Use.

A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent to an average member of the critical group that does not exceed 0.25 mSv (0.025 rem) per year, including no greater than 0.04 mSv (0.004 rem) committed effective dose equivalent or total effective dose equivalent to an average member of the critical group from groundwater sources, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels which are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

R313-15-403. Criteria for License Termination Under Restricted Conditions.

A site will be considered acceptable for license termination under restricted conditions if:

(1) The licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of Section R313-15-402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal; and

(2) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem)per year; and

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a

governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are:

(a) Funds placed into an account segregated from the licensee's assets outside the licensee's administrative control, and in which the adequacy of the trust funds is to be assessed based on an assumed annual one percent real rate of return on investment;

(b) A statement of intent in the case of Federal, State, or local Government licensees, as described in Subsection R313-22-35(6)(d); or

(c) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity; and

(4) The licensee has submitted a decommissioning plan or license termination plan to the Director indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4) and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the license termination plan or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice;

(a) Licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning:

(i) Whether provisions for institutional controls proposed by the licensee;

(A) Will provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem) total effective dose equivalent per year;

(B) Will be enforceable; and

(C) Will not impose undue burdens on the local community or other affected parties; and

(ii) Whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site; and

(b) In seeking advice on the issues identified in Subsection R313-15-403(4)(a), the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(5) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group is as low as reasonably achievable and would not exceed either:

(a) one mSv (0.1 rem) per year; or

(b) five mSv (0.5 rem) per year provided the licensee:

(i) Demonstrates that further reductions in residual radioactivity necessary to comply with the one mSv (0.1 rem) per year value of Subsection R313-15-403(5)(a) are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) Makes provisions for durable institutional controls; and

(iii) Provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every five years to assure that the institutional controls remain in place as necessary to meet the criteria of Subsection R313-15-403(2) and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in Subsection R313-15-403(3).

R313-15-404. Alternate Criteria for License Termination.

(1) The Director may terminate a license using alternative criteria greater than the dose criterion of Section R313-15-402, and Subsections R313-15-403(2) and R313-15-403(4)(a)(i)(A), if the licensee:

(a) Provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the one mSv (0.1 rem) per year limit of Subsection R313-15-301(1)(a), by submitting an analysis of possible sources of exposure; and

(b) Has employed, to the extent practical, restrictions on site use according to the provisions of Section R313-15-403 in minimizing exposures at the site; and

(c) Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; and

(d) Has submitted a decommissioning plan or license termination plan to the Director indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4), and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or license termination plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning; and

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(e) Has provided sufficient financial assurance in the form of a trust fund to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site.

(2) The use of alternate criteria to terminate a license requires the approval of the Director after consideration of recommendations from the Division's staff, comments provided by federal, state and local governments, and any public comments submitted pursuant to Section R313-15-405.

R313-15-405. Public Notification and Public Participation.

Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site pursuant to Sections R313-15-403 or R313-15-404, or whenever the Director deems such notice to be in the public interest, the Director shall:

(1) Notify and solicit comments from:

(a) Local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(b) Federal, state and local governments for cases where

the licensee proposes to release a site pursuant to Section R313-15-404.

(2) Publish a notice in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

R313-15-406. Minimization of Contamination.

(1) Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of waste.

(2) Licensees shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface, in accordance with the existing radiation protection requirements in Section R313-15-101 and radiological criteria for license termination in Sections R313-15-1401 through R313-15-1406.

R313-15-501. Surveys and Monitoring - General.

(1) Each licensee or registrant shall make, or cause to be made, surveys of areas, including the subsurface, that:

(a) May be necessary for the licensee or registrant to comply with Rule R313-15; and

(b) Are reasonable under the circumstances to evaluate:

(i) The magnitude and the extent of radiation levels; and

(ii) Concentrations or quantities of residual radioactive material; and

(iii) The potential radiological hazards of the radiation levels and residual radioactivity detected.

(2) Notwithstanding R313-15-1103(1), records from surveys describing the location and amount of subsurface residual radioactivity identified at the site shall be kept with records important for decommissioning, and such records shall be retained in accordance with R313-22-35(7), as applicable.

(3) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated at intervals not to exceed 12 months for the radiation measured, except when a more frequent interval is specified in another applicable part of these rules or a license condition.

(4) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with Section R313-15-201, with other applicable provisions of these rules, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(5) The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

R313-15-502. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose.

Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of Rule R313-15. As a minimum:

(1) Each licensee or registrant shall monitor occupational exposure to radiation from licensed, unlicensed, and registered radiation sources under the control of the licensee and shall supply and require the use of individual monitoring devices by:

(a) Adults likely to receive, in one year from sources external to the body, a dose in excess of ten percent of the limits in Subsection R313-15-201(1); and

(b) Minors likely to receive, in one year, from radiation sources external to the body, a deep dose equivalent in excess of one mSv (0.1 rem), a lens dose equivalent in excess of 1.5 mSv (0.15 rem), or a shallow dose equivalent to the skin or to the extremities in excess of five mSv (0.5 rem); and

(c) Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of one mSv (0.1 rem); and

(d) Individuals entering a high or very high radiation area; and

(e) Individuals working with medical fluoroscopic equipment.

(i) An individual monitoring device used for the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located under the protective apron at the waist.

(A) If an individual monitoring device worn by a declared pregnant woman has a monthly reported dose equivalent value in excess of 0.5 mSv (50 mrem), the value to be used for determining the dose to the embryo/fetus, pursuant to Subsection R313-15-208(3)(a) for radiation from medical fluoroscopy, may be the value reported by the individual monitoring device worn at the waist underneath the protective apron which has been corrected for the potential overestimation of dose recorded by the monitoring device because of the overlying tissue of the pregnant individual. This correction shall be performed by a radiation safety officer of an institutional radiation safety committee, a qualified expert approved by the Director.

(ii) An individual monitoring device used for lens dose equivalent shall be located at the neck, or an unshielded location closer to the eye, outside the protective apron.

(iii) When only one individual monitoring device is used to determine the effective dose equivalent for external radiation pursuant to Subsection R313-15-201(3)(b), it shall be located at the neck outside the protective apron. When a second individual monitoring device is used, for the same purpose, it shall be located under the protective apron at the waist. Note: The second individual monitoring device is required for a declared pregnant woman.

(iv) A registrant is not required to supply and require the use of individual monitoring devices provided the registrant has conducted a survey, pursuant to Section R313-15-501, that demonstrates that the working environment the individual encounters will not likely result in a dose in excess of ten percent of the limits in Subsection R313-15-201(1), and that the individual is neither a minor nor a declared pregnant woman.

(2) Each licensee or registrant shall monitor, to determine compliance with Section R313-15-204, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(a) Adults likely to receive, in one year, an intake in excess of ten percent of the applicable ALI(s) in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; and

(b) Minors likely to receive, in one year, a committed effective dose equivalent in excess of one mSv (0.1 rem); and

(c) Declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of one mSv (0.1 rem).

Note: All of the occupational doses in Section R313-15-201 continue to be applicable to the declared pregnant worker

as long as the embryo/fetus dose limit is not exceeded.

R313-15-503. Location of Individual Monitoring Devices.

Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with Subsection R313-15-502(1) wear individual monitoring devices as follows:

(1) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar).

(2) An individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located at the waist under any protective apron being worn by the woman.

(3) An individual monitoring device used for monitoring the lens dose equivalent, to demonstrate compliance with Subsection R313-15-201(1)(b)(i), shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye.

(4) An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with Subsection R313-15-201(1)(b)(ii), shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

R313-15-601. Control of Access to High Radiation Areas.

(1) The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(a) A control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of one mSv (0.1 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates; or

(b) A control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(c) Entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by Subsection R313-15-601(1) for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(3) The licensee or registrant may apply to the Director for approval of alternative methods for controlling access to high radiation areas.

(4) The licensee or registrant shall establish the controls required by Subsections R313-15-601(1) and R313-15-601(3) in a way that does not prevent individuals from leaving a high radiation area.

(5) The licensee or registrant is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation provided that:

(a) The packages do not remain in the area longer than three days; and

(b) The dose rate at one meter from the external surface of any package does not exceed 0.1 mSv (0.01 rem) per hour.

(6) The licensee or registrant is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in Rule R313-15 and to operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

(7) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in Section R313-15-601 if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-602. Control of Access to Very High Radiation Areas.

(1) In addition to the requirements in Section R313-15-601, the licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at five Gy (500 rad) or more in one hour at one meter from a source of radiation or any surface through which the radiation penetrates. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation, or to non-self-shielded irradiators.

(2) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as described in Subsection R313-15-602(1) if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-603. Control of Access to Very High Radiation Areas -- Irradiators.

(1) Section R313-15-603 applies to licensees or registrants with sources of radiation in non-self-shielded irradiators. Section R313-15-603 does not apply to sources of radiation that are used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create a high levels of radiation in an area that is accessible to any individual.

(2) Each area in which there may exist radiation levels in excess of five Gy (500 rad) in one hour at one meter from a source of radiation that is used to irradiate materials shall meet the following requirements:

(a) Each entrance or access point shall be equipped with entry control devices which:

(i) Function automatically to prevent any individual from inadvertently entering a very high radiation area; and

(ii) Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(iii) Prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of one mSv (0.1 rem) in one hour.

(b) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by Subsection R313-15-603(2)(a):

(i) The radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices.

(c) The licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(i) The radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee or registrant or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(d) When the shield for stored sealed sources is a liquid, the licensee or registrant shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(e) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of Subsections R313-15-603(2)(c) and R313-15-603(2)(d).

(f) Each area shall be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, which shall be installed in the area and which can prevent the source of radiation from being put into operation.

(g) Each area shall be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the source of radiation.

(h) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour.

(i) The entry control devices required in Subsection R313-15-603(2)(a) shall be tested for proper functioning. See Section R313-15-1110 for recordkeeping requirements.

(i) Testing shall be conducted prior to initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day; and

(ii) Testing shall be conducted prior to resumption of operation of the source of radiation after any unintentional interruption; and

(iii) The licensee or registrant shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(j) The licensee or registrant shall not conduct operations, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(k) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, shall be controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any loose radioactive material that is carried toward such an exit and automatically to prevent loose radioactive material from being carried out of the area.

(3) Licensees, registrants, or applicants for licenses or registrations for sources of radiation within the purview of Subsection R313-15-603(2) which will be used in a variety of positions or in locations, such as open fields or forests, that make it impractical to comply with certain requirements of Subsection R313-15-603(2), such as those for the automatic control of radiation levels, may apply to the Director for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to those specified in Subsection R313-15-603(2). At least one of the alternative measures shall include an entry-preventing interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

(4) The entry control devices required by Subsections R313-15-603(2) and R313-15-603(3) shall be established in such a way that no individual will be prevented from leaving the area.

R313-15-701. Use of Process or Other Engineering Controls.

The licensee or registrant shall use, to the extent practical, process or other engineering controls, such as, containment, decontamination, or ventilation, to control the concentration of radioactive material in air.

R313-15-702. Use of Other Controls.

(1) When it is not practical to apply process or other engineering controls to control the concentration of radioactive material in the air to values below those that define an airborne radioactivity area, the licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(a) Control of access; or

(b) Limitation of exposure times; or

(c) Use of respiratory protection equipment; or

(d) Other controls.

(2) If the licensee or registrant performs an ALARA analysis to determine whether or not respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee or registrant should also consider the impact of respirator use on workers' industrial health and safety.

R313-15-703. Use of Individual Respiratory Protection Equipment.

If the licensee or registrant uses respiratory protection equipment to limit the intake of radioactive material:

(1) Except as provided in Subsection R313-15-703(2), the licensee or registrant shall use only respiratory protection equipment that is tested and certified by the National Institute for Occupational Safety and Health.

(2) The licensee or registrant may use equipment that has not been tested or certified by the National Institute for Occupational Safety and Health or for which there is no schedule for testing or certification, provided the licensee or registrant has submitted to the Director and the Director has approved an application for authorized use of that equipment. The application must include a demonstration by testing, or a demonstration on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(3) The licensee or registrant shall implement and maintain a respiratory protection program that includes:

(a) Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses; and

(b) Surveys and bioassays, as necessary, to evaluate actual intakes; and

(c) Testing of respirators for operability, user seal check for face sealing devices and functional check for others, immediately prior to each use; and

(d) Written procedures regarding

(i) Monitoring, including air sampling and bioassays;

(ii) Supervision and training of respirator users;

(iii) Fit testing;

(iv) Respirator selection;

(v) Breathing air quality;

(vi) Inventory and control;

(vii) Storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

(viii) Recordkeeping; and

(ix) Limitations on periods of respirator use and relief from respirator use; and

(e) Determination by a physician prior to initial fitting of respirators, before the first field use of non-face sealing respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment; and

(f) Fit testing, with fit factor greater than or equal to ten times the APF for negative pressure devices, and a fit factor greater than or equal to 500 for positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed one year. Fit testing must be performed with the facepiece operating in the negative pressure mode.

(4) The licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(5) The licensee or registrant shall also consider limitations appropriate to the type and mode of use. When selecting respiratory devices the licensee shall provide for vision correction, adequate communication, low temperature work environments, and the concurrent use of other safety or radiological protection equipment. The licensee or registrant shall use equipment in such a way as not to interfere with the proper operation of the respirator.

(6) Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The standby persons must be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons must be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

(7) Atmosphere-supplying respirators must be supplied with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 ed. and included in 29 CFR 1910.134(i)(1)(ii)(A) through (E), (2010). Grade D quality air criteria include:

(a) Oxygen content (v/v) of 19.5 to 23.5%;

(b) Hydrocarbon (condensed) content of five milligrams per cubic meter of air or less;

(c) Carbon monoxide (CO) content of ten ppm or less;

(d) Carbon dioxide content of 1,000 ppm or less; and

(e) Lack of noticeable odor.

(8) The licensee shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face and facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

(9) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value must be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

R313-15-704. Further Restrictions on the Use of Respiratory Protection Equipment.

The Director may impose restrictions in addition to the provisions of Section R313-15-702, Section R313-15-703, and Appendix A of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference to:

(1) Ensure that the respiratory protection program of the licensee or registrant is adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(2) Limit the extent to which a licensee or registrant may use respiratory protection equipment instead of process or other engineering controls.

R313-15-705. Application for Use of Higher Assigned Protection Factors.

The licensee or registrant shall obtain authorization from the Director before using assigned protection factors in excess of those specified in Appendix A of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference. The Director may authorize a licensee or registrant to use higher assigned protection factors on receipt of an application that:

(1) Describes the situation for which a need exists for higher protection factors; and

(2) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

R313-15-801. Security and Control of Licensed or Registered Sources of Radiation.

(1) The licensee or registrant shall secure licensed or registered radioactive material from unauthorized removal or access.

(2) The licensee or registrant shall maintain constant surveillance, and use devices or administrative procedures to prevent unauthorized use of licensed or registered radioactive material that is in an unrestricted area and that is not in storage.

(3) The registrant shall secure registered radiation machines from unauthorized removal.

(4) The registrant shall use devices or administrative procedures to prevent unauthorized use of registered radiation machines.

R313-15-901. Caution Signs.

(1) Standard Radiation Symbol. Unless otherwise authorized by the Director, the symbol prescribed by 10 CFR 20.1901, (2010), which is incorporated by reference, shall use

the colors magenta, or purple, or black on yellow background. The symbol prescribed is the three-bladed design as follows:

(a) Cross-hatched area is to be magenta, or purple, or black, and

(b) The background is to be yellow.

(2) Exception to Color Requirements for Standard Radiation Symbol. Notwithstanding the requirements of 10 CFR 20.1901(a), (2010), which is incorporated by reference, licensees or registrants are authorized to label sources, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(3) Additional Information on Signs and Labels. In addition to the contents of signs and labels prescribed in Rule R313-15, the licensee or registrant shall provide, on or near the required signs and labels, additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

R313-15-902. Posting Requirements.

(1) Posting of Radiation Areas. The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(2) Posting of High Radiation Areas. The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(3) Posting of Very High Radiation Areas. The licensee or registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA."

(4) Posting of Airborne Radioactivity Areas. The licensee or registrant shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(5) Posting of Areas or Rooms in which Licensed or Registered Material is Used or Stored. The licensee or registrant shall post each area or room in which there is used or stored an amount of licensed or registered material exceeding ten times the quantity of such material specified in Appendix C of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL."

R313-15-903. Exceptions to Posting Requirements.

(1) A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight hours, if each of the following conditions is met:

(a) The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in Rule R313-15; and

(b) The area or room is subject to the licensee's or registrant's control.

(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to Section R313-15-902 provided that the patient could be released from licensee control pursuant to Rule R313-32.

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.05 mSv (0.005 rem) per hour.

(4) A room or area is not required to be posted with a caution sign because of the presence of radiation machines used solely for diagnosis in the healing arts.

(5) Rooms in hospitals or clinics that are used for teletherapy are exempt from the requirement to post caution signs under Section R313-15-902 if:

(a) Access to the room is controlled pursuant to Section R313-32; and

(b) Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in Rule R313-15.

R313-15-904. Labeling Containers and Radiation Machines.

(1) The licensee or registrant shall ensure that each container of licensed or registered material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) Each licensee or registrant shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(3) Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner which cautions individuals that radiation is produced when it is energized.

R313-15-905. Exemptions to Labeling Requirements.

A licensee or registrant is not required to label:

(1) Containers holding licensed or registered material in quantities less than the quantities listed in Appendix C of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; or

(2) Containers holding licensed or registered material in concentrations less than those specified in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; or

(3) Containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by Rule R313-15; or

(4) Containers when they are in transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation; or

(5) Containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells. The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) Installed manufacturing or process equipment, such as piping and tanks.

R313-15-906. Procedures for Receiving and Opening Packages.

(1) Each licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference, shall make

arrangements to receive:

(a) The package when the carrier offers it for delivery; or

(b) The notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(2) Each licensee or registrant shall:

(a) Monitor the external surfaces of a labeled package for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in Section R313-12-3; and

(b) Monitor the external surfaces of a labeled package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference; and

(c) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(3) The licensee or registrant shall perform the monitoring required by Subsection R313-15-906(2) as soon as practical after receipt of the package, but not later than three hours after the package is received at the licensee's or registrant's facility if it is received during the licensee's or registrant's normal working hours or if there is evidence of degradation of package integrity, such as a package that is crushed, wet, or damaged. If a package is received after working hours, and has no evidence of degradation of package integrity, the package shall be monitored no later than three hours from the beginning of the next working day.

(4) The licensee or registrant shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the Director when:

(a) Removable radioactive surface contamination exceeds the limits of Section R313-19-100 which incorporates 10 CFR 71.87(i) by reference; or

(b) External radiation levels exceed the limits of Section R313-19-100 which incorporates 10 CFR 71.47 by reference.

(5) Each licensee or registrant shall:

(a) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(b) Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(6) Licensees or registrants transferring special form sources in vehicles owned or operated by the licensee or registrant to and from a work site are exempt from the contamination monitoring requirements of Subsection R313-15-906(2), but are not exempt from the monitoring requirement in Subsection R313-15-906(2) for measuring radiation levels that ensures that the source is still properly lodged in its shield.

R313-15-1001. Waste Disposal - General Requirements.

(1) A licensee or registrant shall dispose of licensed or registered material only:

(a) By transfer to an authorized recipient as provided in Section R313-15-1006 or in Rules R313-21, R313-22, R313-24, or R313-25, or to the U.S. Department of Energy; or

(b) By decay in storage; or

(c) By release in effluents within the limits in Section R313-15-301; or

(d) As authorized pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1008.

(2) A person shall be specifically licensed or registered to receive waste containing licensed or registered material from other persons for:

(a) Treatment prior to disposal; or

(b) Treatment or disposal by incineration; or

(c) Decay in storage; or

(d) Disposal at a land disposal facility licensed pursuant to Rule R313-25; or

(e) Storage until transferred to a storage or disposal facility authorized to receive the waste.

R313-15-1002. Method for Obtaining Approval of Proposed Disposal Procedures.

A licensee or registrant or applicant for a license or registration may apply to the Director for approval of proposed procedures, not otherwise authorized in these rules, to dispose of licensed or registered material generated in the licensee's or registrant's operations. Each application shall include:

(1) A description of the waste containing licensed or registered material to be disposed of, including the physical and chemical properties that have an impact on risk evaluation, and the proposed manner and conditions of waste disposal; and

(2) An analysis and evaluation of pertinent information on the nature of the environment; and

(3) The nature and location of other potentially affected facilities; and

(4) Analyses and procedures to ensure that doses are maintained ALARA and within the dose limits in Rule R313-15.

R313-15-1003. Disposal by Release into Sanitary Sewerage.

(1) A licensee or registrant may discharge licensed or registered material into sanitary sewerage if each of the following conditions is satisfied:

(a) The material is readily soluble, or is readily dispersible biological material, in water; and

(b) The quantity of licensed or registered radioactive material that the licensee or registrant releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee or registrant does not exceed the concentration listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; and

(c) If more than one radionuclide is released, the following conditions shall also be satisfied:

(i) The licensee or registrant shall determine the fraction of the limit in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee or registrant into the sewer by the concentration of that radionuclide listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; and

(ii) The sum of the fractions for each radionuclide required by Subsection R313-15-1003(1)(c)(i) does not exceed unity; and

(d) The total quantity of licensed or registered radioactive material that the licensee or registrant releases into the sanitary sewerage system in a year does not exceed 185 GBq (five Ci) of hydrogen-3, 37 GBq (one Ci) of carbon-14, and 37 GBq (one Ci) of all other radioactive materials combined.

(2) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in Subsection R313-15-1003(1).

R313-15-1004. Treatment or Disposal by Incineration.

A licensee or registrant may treat or dispose of licensed or registered material by incineration only in the form and concentration specified in Section R313-15-1005 or as specifically approved by the Director pursuant to Section R313-15-1002.

R313-15-1005. Disposal of Specific Wastes.

(1) A licensee or registrant may dispose of the following licensed or registered material as if it were not radioactive:

(a) 1.85 kBq (0.05 uCi), or less, of hydrogen-3 or carbon-14 per gram of medium used for liquid scintillation counting; and

(b) 1.85 kBq (0.05 uCi) or less, of hydrogen-3 or carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.

(2) A licensee or registrant shall not dispose of tissue pursuant to Subsection R313-15-1005(1)(b) in a manner that would permit its use either as food for humans or as animal feed.

(3) The licensee or registrant shall maintain records in accordance with Section R313-15-1109.

R313-15-1006. Transfer for Disposal and Manifests.

(1) The requirements of Section R313-15-1006 and Appendix G of 10 CFR 20.1001 to 20.2402, (2010), which are incorporated into these rules by reference, are designed to:

(a) control transfers of low-level radioactive waste by any waste generator, waste collector, or waste processor licensee, as defined in Appendix G in 10 CFR 20.1001 to 20.2402, (2010), who ships low-level waste either directly, or indirectly through a waste collector or waste processor, to a licensed low-level waste land disposal facility as defined in Section R313-25-2;

(b) establish a manifest tracking system; and

(c) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on the U.S. Nuclear Regulatory Commission's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with Appendix G to 10 CFR 20.1001 to 20.2402, (2010), which is incorporated into these rules by reference.

(3) Each shipment manifest shall include a certification by the waste generator as specified in Section II of Appendix G to 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(4) Each person involved in the transfer of waste for disposal or in the disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section III of Appendix G to 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(5) A licensee shipping byproduct material as defined in paragraphs (c) and (d) of the Section R313-12-3 definition of byproduct material intended for ultimate disposal at a land disposal facility licensed under Rule R313-25 must document the information required on the NRC's Uniform Low-Level Radioactive Waste Manifest and transfer the recorded manifest information to the intended consignee in accordance with Appendix G to 10 CFR Part 20 (2010 edition).

R313-15-1007. Compliance with Environmental and Health Protection Rules.

Nothing in Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006 relieves the licensee or registrant from complying with other applicable Federal, State and local rules governing any other toxic or hazardous properties of materials that may be disposed of pursuant to Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006.

R313-15-1008. Disposal of Section R313-12-3 Byproduct Material Definition Paragraphs (c) and (d).

(1) Licensed material defined in Section R313-12-3, byproduct material definition, paragraphs (c) and (d), may be disposed in accordance with Rule R313-25, even though it is not defined as low-level radioactive waste. Therefore, licensed byproduct material being disposed of at a facility, or transferred for ultimate disposal at a facility licensed under Rule R313-25, must meet the requirements of Section R313-15-1006.

(2) A licensee may dispose of licensed material defined in Section R313-12-3, byproduct material definition, paragraphs (c) and (d), at a disposal facility authorized to dispose of such material in accordance with Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005.

R313-15-1009. Classification and Characteristics of Low-Level Radioactive Waste.

(1) Classification of Radioactive Waste for Land Disposal

(a) Considerations. Determination of the classification of radioactive waste involves two considerations. First, consideration shall be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration shall be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(b) Classes of waste.

(i) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste shall meet the minimum requirements set forth in Subsection R313-15-1009(2)(a). If Class A waste also meets the stability requirements set forth in Subsection R313-15-1009(2)(b), it is not necessary to segregate the waste for disposal.

(ii) Class B waste is waste that shall meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1009(2).

(iii) Class C waste is waste that not only shall meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1009(2).

(c) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in Table I, classification shall be determined as follows:

(i) If the concentration does not exceed 0.1 times the value in Table I, the waste is Class A.

(ii) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in Table I, the waste is Class C.

(iii) If the concentration exceeds the value in Table I, the waste is not generally acceptable for land disposal.

(iv) For wastes containing mixtures of radionuclides listed in Table I, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1009(1)(g).

TABLE I

Radionuclide	Concentration curie/cubic meter(1)	nanocurie/gram(2)
C-14	8	
C-14 in activated metal	80	

Ni-59 in activated metal	220
Nb-94 in activated metal	0.2
Tc-99	3
I-129	0.08
Alpha emitting transuranic radionuclides with half-life greater than five years	100
Pu-241	3,500
Cm-242	20,000
Ra-226	100

NOTE: (1) To convert the Ci/m^3 values to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) To convert the nCi/g values to becquerel (Bq)/gram, multiply the nCi/g value by 37.

(d) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in Table I, classification shall be determined based on the concentrations shown in Table II. However, as specified in Subsection R313-15-1009(1)(f), if radioactive waste does not contain any nuclides listed in either Table I or II, it is Class A.

(i) If the concentration does not exceed the value in Column 1, the waste is Class A.

(ii) If the concentration exceeds the value in Column 1 but does not exceed the value in Column 2, the waste is Class B.

(iii) If the concentration exceeds the value in Column 2 but does not exceed the value in Column 3, the waste is Class C.

(iv) If the concentration exceeds the value in Column 3, the waste is not generally acceptable for near-surface disposal.

(v) For wastes containing mixtures of the radionuclides listed in Table II, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1009(1)(g).

TABLE II

Radionuclide	Concentration, curie/cubic meter(1) Column 1	Column 2	Column 3
Total of all radionuclides with less than 5-year half-life	700	(2)	(2)
H-3	40	(2)	(2)
Co-60	700	(2)	(2)
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600

NOTE: (1) To convert the Ci/m^3 value to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in Table II determine the waste to be Class C independent of these radionuclides.

(e) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in Table I and some of which are listed in Table II, classification shall be determined as follows:

(i) If the concentration of a radionuclide listed in Table I is less than 0.1 times the value listed in Table I, the class shall be that determined by the concentration of radionuclides listed in Table II.

(ii) If the concentration of a radionuclide listed in Table I exceeds 0.1 times the value listed in Table I, but does not exceed the value in Table I, the waste shall be Class C, provided the concentration of radionuclides listed in Table II does not exceed the value shown in Column 3 of Table II.

(f) Classification of wastes with radionuclides other than those listed in Tables I and II. If the waste does not contain any radionuclides listed in either Table I or II, it is Class A.

(g) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits shall all be taken from the same column of the same table. The sum of the fractions for the column shall be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 1.85 TBq/m^3 (50 Ci/m^3) and Cs-137 in a concentration of 814 GBq/m^3 (22 Ci/m^3). Since the concentrations both exceed the values in Column 1, Table II, they shall be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33., for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(h) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as becquerel (nanocurie) per gram.

(2) Radioactive Waste Characteristics

(a) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(i) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of Rule R313-15, the site license conditions shall govern.

(ii) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(iii) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(iv) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume.

(v) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(vi) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with Subsection R313-15-1009(2)(a)(viii).

(vii) Waste shall not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(viii) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20 degrees celsius. Total activity shall not exceed 3.7 TBq (100 Ci) per container.

(ix) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practical the potential hazard from the non-radiological materials.

(b) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides

a recognizable and nondispersible waste.

(i) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(ii) Notwithstanding the provisions in Subsections R313-15-1009(2)(a)(iii) and R313-15-1009(2)(a)(iv), liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5 percent of the volume of the waste for waste processed to a stable form.

(iii) Void spaces within the waste and between the waste and its package shall be reduced to the extent practical.

(3) Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with Subsection R313-15-1009(1).

R313-15-1101. Records - General Provisions.

(1) Each licensee or registrant shall use the SI units becquerel, gray, sievert and coulomb per kilogram, or the special units, curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by Rule R313-15.

(2) Notwithstanding the requirements of Subsection R313-15-1101(1), when recording information on shipment manifests, as required in Subsection R313-15-1006(2), information must be recorded in SI units or in SI units and the special units specified in Subsection R313-15-1101(1).

(3) The licensee or registrant shall make a clear distinction among the quantities entered on the records required by Rule R313-15, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, lens dose equivalent, deep dose equivalent, or committed effective dose equivalent.

R313-15-1102. Records of Radiation Protection Programs.

(1) Each licensee or registrant shall maintain records of the radiation protection program, including:

(a) The provisions of the program; and

(b) Audits and other reviews of program content and implementation.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(a) until the Director terminates each pertinent license or registration requiring the record. The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(b) for three years after the record is made.

R313-15-1103. Records of Surveys.

(1) Each licensee or registrant shall maintain records showing the results of surveys and calibrations required by Section R313-15-501 and Subsection R313-15-906(2). The licensee or registrant shall retain these records for three years after the record is made.

(2) The licensee or registrant shall retain each of the following records until the Director terminates each pertinent license or registration requiring the record:

(a) Records of the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(b) Records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(c) Records showing the results of air sampling, surveys, and bioassays required pursuant to Subsections R313-15-703(3)(a) and R313-15-703(3)(b); and

(d) Records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

R313-15-1105. Records of Prior Occupational Dose.

For each individual who is likely to receive in a year an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall retain the records of prior occupational dose and exposure history as specified in Section R313-15-205 on form DWMRC-05 or equivalent until the Director terminates each pertinent license requiring this record. The licensee or registrant shall retain records used in preparing form DWMRC-05 or equivalent for three years after the record is made.

R313-15-1106. Records of Planned Special Exposures.

(1) For each use of the provisions of Section R313-15-206 for planned special exposures, the licensee or registrant shall maintain records that describe:

(a) The exceptional circumstances requiring the use of a planned special exposure; and

(b) The name of the management official who authorized the planned special exposure and a copy of the signed authorization; and

(c) What actions were necessary; and

(d) Why the actions were necessary; and

(e) What precautions were taken to assure that doses were maintained ALARA; and

(f) What individual and collective doses were expected to result; and

(g) The doses actually received in the planned special exposure.

(2) The licensee or registrant shall retain the records until the Director terminates each pertinent license or registration requiring these records.

R313-15-1107. Records of Individual Monitoring Results.

(1) Recordkeeping Requirement. Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to Section R313-15-502, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(a) The deep dose equivalent to the whole body, lens dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities; and

(b) The estimated intake of radionuclides, see Section R313-15-202; and

(c) The committed effective dose equivalent assigned to the intake of radionuclides; and

(d) The specific information used to calculate the committed effective dose equivalent pursuant to Subsections R313-15-204(1) and R313-15-204(3) and when required by Section R313-15-502; and

(e) The total effective dose equivalent when required by Section R313-15-202; and

(f) The total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose.

(2) Recordkeeping Frequency. The licensee or registrant shall make entries of the records specified in Subsection R313-15-1107(1) at intervals not to exceed one year.

(3) Recordkeeping Format. The licensee or registrant shall maintain the records specified in Subsection R313-15-1107(1)

on form DWMRC-06, in accordance with the instructions for form DWMRC-06, or in clear and legible records containing all the information required by form DWMRC-06.

(4) The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

(5) The licensee or registrant shall retain each required form or record until the Director terminates each pertinent license or registration requiring the record.

R313-15-1108. Records of Dose to Individual Members of the Public.

(1) Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public. See Section R313-15-301.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1108(1) until the Director terminates each pertinent license or registration requiring the record. Requirements for disposition of these records, prior to license termination, are located in Section R313-12-51 for activities licensed under these rules.

R313-15-1109. Records of Waste Disposal.

(1) Each licensee or registrant shall maintain records of the disposal of licensed or registered materials made pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, Rule R313-25, and disposal by burial in soil, including burials authorized before January 28, 1981.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1109(1) until the Director terminates each pertinent license or registration requiring the record.

R313-15-1110. Records of Testing Entry Control Devices for Very High Radiation Areas.

(1) Each licensee or registrant shall maintain records of tests made pursuant to Subsection R313-15-603(2)(i) on entry control devices for very high radiation areas. These records shall include the date, time, and results of each such test of function.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1110(1) for three years after the record is made.

R313-15-1111. Form of Records.

Each record required by Rule R313-15 shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

R313-15-1201. Reports of Stolen, Lost, or Missing Licensed or Registered Sources of Radiation.

(1) Telephone Reports. Each licensee or registrant shall report to the Director by telephone as follows:

(a) Immediately after its occurrence becomes known to the licensee or registrant, stolen, lost, or missing licensed or registered radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, under such circumstances that it appears to the licensee or registrant that an exposure could result to individuals in unrestricted areas;

(b) Within 30 days after its occurrence becomes known to the licensee or registrant, lost, stolen, or missing licensed or registered radioactive material in an aggregate quantity greater than ten times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, that is still missing.

(c) Immediately after its occurrence becomes known to the registrant, a stolen, lost, or missing radiation machine.

(2) Written Reports. Each licensee or registrant required to make a report pursuant to Subsection R313-15-1201(1) shall, within 30 days after making the telephone report, make a written report to the Director setting forth the following information:

(a) A description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model and serial number, type and maximum energy of radiation emitted;

(b) A description of the circumstances under which the loss or theft occurred; and

(c) A statement of disposition, or probable disposition, of the licensed or registered source of radiation involved; and

(d) Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and

(e) Actions that have been taken, or will be taken, to recover the source of radiation; and

(f) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

(3) Subsequent to filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within 30 days after the licensee or registrant learns of such information.

(4) The licensee or registrant shall prepare any report filed with the Director pursuant to Section R313-15-1201 so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

R313-15-1202. Notification of Incidents.

(1) Immediate Notification. Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause any of the following conditions:

(a) An individual to receive:

(i) A total effective dose equivalent of 0.25 Sv (25 rem) or more; or

(ii) A lens dose equivalent of 0.75 Sv (75 rem) or more; or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 2.5 Gy (250 rad) or more; or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(2) Twenty-Four Hour Notification. Each licensee or registrant shall, within 24 hours of discovery of the event, report to the Director each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:

(a) An individual to receive, in a period of 24 hours:

(i) A total effective dose equivalent exceeding 0.05 Sv (five rem); or

(ii) A lens dose equivalent exceeding 0.15 Sv (15 rem); or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 0.5 Sv (50 rem); or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(3) The licensee or registrant shall prepare each report filed with the Director pursuant to Section R313-15-1202 so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(4) Licensees or registrants shall make the reports required by Subsections R313-15-1202(1) and R313-15-1202(2) to the Director by telephone, telegram, mailgram, or facsimile.

(5) The provisions of Section R313-15-1202 do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to Section R313-15-1204.

R313-15-1203. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits.

(1) Reportable Events. In addition to the notification required by Section R313-15-1202, each licensee or registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(a) Incidents for which notification is required by Section R313-15-1202; or

(b) Doses in excess of any of the following:

(i) The occupational dose limits for adults in Section R313-15-201; or

(ii) The occupational dose limits for a minor in Section R313-15-207; or

(iii) The limits for an embryo/fetus of a declared pregnant woman in Section R313-15-208; or

(iv) The limits for an individual member of the public in Section R313-15-301; or

(v) Any applicable limit in the license or registration; or

(vi) The ALARA constraints for air emissions established under Subsection R313-15-101(4); or

(c) Levels of radiation or concentrations of radioactive material in:

(i) A restricted area in excess of applicable limits in the license or registration; or

(ii) An unrestricted area in excess of ten times the applicable limit set forth in Rule R313-15 or in the license or registration, whether or not involving exposure of any individual in excess of the limits in Section R313-15-301; or

(d) For licensees subject to the provisions of U.S. Environmental Protection Agency's generally applicable environmental radiation standards in 40 CFR 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those standards.

(2) Contents of Reports.

(a) Each report required by Subsection R313-15-1203(1) shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(i) Estimates of each individual's dose; and

(ii) The levels of radiation and concentrations of radioactive material involved; and

(iii) The cause of the elevated exposures, dose rates, or concentrations; and

(iv) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license or registration conditions.

(b) Each report filed pursuant to Subsection R313-15-1203(1) shall include for each occupationally overexposed individual: the name, Social Security account number, and date of birth. With respect to the limit for the embryo/fetus in Section R313-15-208, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(3) All licensees or registrants who make reports pursuant to Subsection R313-15-1203(1) shall submit the report in writing to the Director.

R313-15-1204. Reports of Planned Special Exposures.

The licensee or registrant shall submit a written report to the Director within 30 days following any planned special exposure conducted in accordance with Section R313-15-206, informing the Director that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by Section R313-15-1106.

R313-15-1205. Reports to Individuals of Exceeding Dose Limits.

When a licensee or registrant is required, pursuant to the provisions of Sections R313-15-1203 or R313-15-1204, to report to the Director any exposure of an identified occupationally exposed individual, or an identified member of the public, to sources of radiation, the licensee or registrant shall also provide the individual a written report on the exposure data included in the report to the Director. This report shall be transmitted at a time no later than the transmittal to the Director.

R313-15-1206. Reports of Transactions Involving Nationally Tracked Sources.

Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report as specified in paragraphs (1) through (5) of this section for each type of transaction.

(1) Each licensee who manufactures a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(a) The name, address, and license number of the reporting licensee;

(b) The name of the individual preparing the report;

(c) The manufacturer, model, and serial number of the source;

(d) The radioactive material in the source;

(e) The initial source strength in becquerels (curies) at the time of manufacture; and

(f) The manufacture date of the source.

(2) Each licensee that transfers a nationally tracked source to another person shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(a) The name, address, and license number of the reporting licensee;

(b) The name of the individual preparing the report;

(c) The name and license number of the recipient facility and the shipping address;

(d) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(e) The radioactive material in the source;

(f) The initial or current source strength in becquerels (curies);

(g) The date for which the source strength is reported;

(h) The shipping date;
(i) The estimated arrival date; and
(j) For nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification of the container with the nationally tracked source.

(3) Each licensee that receives a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:
(a) The name, address, and license number of the reporting licensee;
(b) The name of the individual preparing the report;
(c) The name, address, and license number of the person that provided the source;
(d) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
(e) The radioactive material in the source;
(f) The initial or current source strength in becquerels (curies);
(g) The date for which the source strength is reported;
(h) The date of receipt; and
(i) For material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(4) Each licensee that disassembles a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:
(a) The name, address, and license number of the reporting licensee;
(b) The name of the individual preparing the report;
(c) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
(d) The radioactive material in the source;
(e) The initial or current source strength in becquerels (curies);
(f) The date for which the source strength is reported; and
(g) The disassemble date of the source.

(5) Each licensee who disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:
(a) The name, address, and license number of the reporting licensee;
(b) The name of the individual preparing the report;
(c) The waste manifest number;
(d) The container identification with the nationally tracked source.
(e) The date of disposal; and
(f) The method of disposal.

(6) The reports discussed in paragraphs (1) through (5) of this section must be submitted by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports must be submitted to the National Source Tracking System by using:
(a) The on-line National Source Tracking System;
(b) Electronically using a computer-readable format;
(c) By facsimile;
(d) By mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or
(e) By telephone with followup by facsimile or mail.

(7) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within 5 business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The reconciliation must be conducted during the month of January in each year. The reconciliation process must include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by paragraphs (1) through (5) of this section. By January 31 of each year, each licensee must submit to the National Source Tracking System confirmation that the data in the National Source Tracking System is correct.

(8) Each licensee that possesses Category 1 nationally tracked sources shall report its initial inventory of Category 1 nationally tracked sources to the National Source Tracking System by November 15, 2007. Each licensee that possesses Category 2 nationally tracked sources shall report its initial inventory of Category 2 nationally tracked sources to the National Source Tracking System by November 30, 2007. The information may be submitted by using any of the methods identified by paragraph (6)(a) through (6)(d) of this section. The initial inventory report must include the following information:
(a) The name, address, and license number of the reporting licensee;
(b) The name of the individual preparing the report;
(c) The manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;
(d) The radioactive material in the sealed source;
(e) The initial or current source strength in becquerels (curies); and
(f) The date for which the source strength is reported.

R313-15-1207. Notifications and Reports to Individuals.

(1) Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in Rule R313-18.

(2) When a licensee or registrant is required pursuant to Section R313-15-1203 to report to the Director any exposure of an individual to radiation or radioactive material, the licensee or registrant shall also notify the individual. Such notice shall be transmitted at a time not later than the transmittal to the Director, and shall comply with the provisions of Rule R313-18.

R313-15-1301. Vacating Premises.

Each specific licensee or registrant shall, no less than 30 days before vacating or relinquishing possession or control of premises which may have been contaminated with radioactive material as a result of his activities, notify the Director in writing of intent to vacate. When deemed necessary by the Director, the licensee shall decontaminate the premises in such a manner that the annual total effective dose equivalent to any individual after the site is released for unrestricted use should not exceed 0.1 mSv (0.01 rem)above background and that the annual total effective dose equivalent from any specific environmental source during decommissioning activities should not exceed 0.1 mSv (0.01 rem)above background.

KEY: radioactive materials, contamination, waste disposal, safety

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Notice of Continuation January 17, 2017	**19-6-107**

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-21. General Licenses.
R313-21-1. Purpose and Scope.

(1) R313-21 establishes general licenses for the possession and use of radioactive material contained in certain items and a general license for ownership of radioactive material.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3)and 19-3-104(6).

R313-21-21. General Licenses--Source Material.

(1) A general license is hereby issued authorizing commercial and industrial firms, research, educational and medical institutions, and state and local government agencies to use and transfer not more than 6.82 kilogram (15 lb) of source material at any one time for research, development, educational, commercial, or operational purposes. A person authorized to use or transfer source material, pursuant to this general license, may not receive more than a total of 68.2 kilogram (150 lb) of source material in any one calendar year.

(2) Persons who receive, possess, use, or transfer source material pursuant to the general license issued in R313-21-21(1) are exempt from the provisions of R313-15 and R313-18, to the extent that such receipt, possession, use or transfer is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to a person who is also in possession of source material under a specific license issued pursuant to R313-22.

(3) Persons who receive, possess, use, or transfer source material pursuant to the general license in R313-21-21(1) are prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings except as may be authorized by the Director in a specific license.

(4) A general license is hereby issued authorizing the receipt of title to source material without regard to quantity. This general license does not authorize a person to receive, possess, use, or transfer source material.

(5) Depleted uranium in industrial products and devices.

(a) A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of R313-21-21(5)(b), (c), (d), and (e), depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

(b) The general license in R313-21-21(5)(a) applies only to industrial products or devices which have been manufactured or initially transferred, either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to R313-22-75(11) or in accordance with a specific license issued to the manufacturer by the Nuclear Regulatory Commission, an Agreement State, or a Licensing State which authorizes manufacture of the products or devices for distribution to persons generally licensed by the Nuclear Regulatory Commission, an Agreement State, or a Licensing State.

(c)(i) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by R313-21-21(5)(a) shall file form DWMRC-12 "Registration Form-Use of Depleted Uranium Under General License," with the Director. The form shall be submitted within 30 days after the first receipt or acquisition of depleted uranium. The registrant shall furnish on form DWMRC-12 the following information and other information as may be required by that form:

(A) name and address of the registrant;

(B) a statement that the registrant has developed and will maintain procedures designed to establish physical control over the depleted uranium described in R313-21-21(5)(a) and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

(C) name and title, address, and telephone number of the individual duly authorized to act for and on behalf of the registrant in supervising the procedures identified in R313-21-21(5)(c)(i)(B).

(ii) The registrant possessing or using depleted uranium under the general license established by R313-21-21(5)(a) shall report in writing to the Director any changes in information previously furnished on form DWMRC-12 "Registration Form - Use of Depleted Uranium Under General License." The report shall be submitted within 30 days after the effective date of the change.

(d) A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by R313-21-21(5)(a):

(i) shall not introduce depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;

(ii) shall not abandon depleted uranium;

(iii) shall transfer or dispose of depleted uranium only by transfer in accordance with the provisions of R313-19-41. In the case where the transferee receives the depleted uranium pursuant to the general license established by R313-21-21(5)(a), the transferor shall furnish the transferee a copy of R313-21 and a copy of form DWMRC-12. In the case where the transferee receives the depleted uranium pursuant to a general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to R313-21-21(5)(a), the transferor shall furnish the transferee a copy of this rule and a copy of form DWMRC-12 accompanied by a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in R313-21;

(iv) within 30 days of any transfer, shall report in writing to the Director the name and address of the person receiving the depleted uranium pursuant to the transfer;

(v) shall not export depleted uranium except in accordance with a license issued by the Nuclear Regulatory Commission pursuant to 10 CFR Part 110; and

(vi) shall pay annual fees pursuant to R313-70.

(e) Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by R313-21-21(5)(a) is exempt from the requirements of R313-15 and R313-18 of these rules with respect to the depleted uranium covered by that general license.

R313-21-22. General Licenses*--Radioactive Material Other Than Source Material.

NOTE: *Different general licenses are issued in this section, each of which has its own specific conditions and requirements.

(1) RESERVED.

(2) Certain items and self-luminous products containing radium-226.

(a) A general license is hereby issued to a person to acquire, receive, possess, use, or transfer, in accordance with the provisions of Subsections R313-21-22(2)(b), R313-21-22(2)(c), and R313-21-22(2)(d), radium-226 contained in the following products manufactured prior to November 30, 2007.

(i) Antiquities originally intended for use by the general public. For the purposes of Subsection R313-21-22(2)(a), antiquities mean products originally intended for use by the general public and distributed in the late 19th and early 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads.

(ii) Intact timepieces containing greater than 37 kilobecquerels (1 uCi), nonintact timepieces, and timepiece

hands and dials no longer installed in timepieces.

(iii) Luminous items installed in air, marine, or land vehicles.

(iv) All other luminous products provided that no more than 100 items are used or stored at the same location at one time.

(v) Small radium sources containing no more than 37 kilobecquerels (1 uCi) of radium-226. For the purposes of Subsection R313-21-22(2)(a), "small radium sources" means discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations such as cloud chambers and spinthariscopes, electron tubes, static eliminators, or as designated by the Director.

(b) Persons who acquire, receive, possess, use, or transfer radioactive material under the general license issued in Subsection R313-21-22(2)(a) are exempt from the provisions of Rules R313-15, R313-18, and Sections R313-12-51 and R313-19-50, to the extent that the receipt, possession, use, or transfers of radioactive material is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to a person specifically licensed under Rule R313-22.

(c) A person who acquires, receives, possesses, uses, or transfers radioactive material in accordance with the general license in Subsection R313-21-22(2)(a):

(i) Shall notify the Director should there be an indication of possible damage to the product so that it appears it could result in a loss of the radioactive material. A report containing a brief description of the event, and the remedial action taken, must be furnished to the Director within 30 days.

(ii) Shall not abandon products containing radium-226. The product, and radioactive material from the product, may only be disposed of according to Section R313-15-1008 or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by the Director.

(iii) Shall not export products containing radium-226 except in accordance with 10 CFR Part 110.

(iv) Shall dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with Federal or State solid or hazardous waste laws, inluding the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005, by transfer to a person authorized to receive radium-226 under Rule R313-22 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State or as otherwise approved by the Director.

(v) Shall respond to written requests from the Director to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the Director a written justification using the method stated in Section R313-12-110.

(d) The general license in R313-21-22(2)(a) does not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226, except that timepieces may be disassembled and repaired.

(3) RESERVED.

(4) Certain detecting, measuring, gauging or controlling devices and certain devices for producing light or an ionized atmosphere.*

NOTE: *Persons possessing radioactive material in devices under a general license in R313-21-22(4) before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of R313-21-22(4) in effect on January 14, 1975.

(a) A general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and state or local government agencies to own, acquire, receive, possess, use or transfer, in accordance with the provisions of R313-21-22(4)(b), (c) and (d), radioactive material, excluding special nuclear material, contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

(b)(i) The general license in R313-21-22(4)(a) applies only to radioactive material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in:

(A) a specific license issued by the Director pursuant to R313-22-75(4); or

(B) an equivalent specific license issued by the Nuclear Regulatory Commission or an Agreement State; or

(C) An equivalent specific license issued by a State with provisions comparable to R313-22-75.*

NOTE: *Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in 21 CFR 179.21.

(ii) The devices must have been received from one of the specific licensees described in R313-21-22(4)(b)(i) or through a transfer made under R313-21-22(4)(c)(ix).

(c) Any person who owns, acquires, receives, possesses, uses or transfers radioactive material in a device pursuant to the general license in R313-21-22(4)(a):

(i) shall assure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited are maintained thereon and shall comply with all instructions and precautions provided by the labels;

(ii) shall assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six-month intervals or at other intervals as are specified in the label; however:

(A) Devices containing only krypton need not be tested for leakage of radioactive material, and

(B) Devices containing only tritium or not more than 3.7 megabecquerel (100 uCi) of other beta, gamma, or both, emitting material or 0.37 megabecquerel (10 uCi) of alpha emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose;

(iii) shall assure that other testing, installation, servicing, and removal from installation involving the radioactive materials, its shielding or containment, are performed:

(A) in accordance with the instructions provided by the labels; or

(B) by a person holding a specific license pursuant to R313-22 or from the Nuclear Regulatory Commission, an Agreement State, or a Licensing State to perform such activities;

(iv) shall maintain records showing compliance with the requirements of R313-21-22(4)(c)(ii) and (iii). The records shall show the results of tests. The records also shall show the dates of performance of, and the names of persons performing, testing, installation, servicing, and removal from the installation the radioactive material and its shielding or containment. The licensee shall retain these records as follows:

(A) Each record of a test for leakage of radioactive material required by R313-21-22(4)(c)(ii) shall be retained for three years after the next required leak test is performed or until the sealed source is transferred or disposed of;

(B) Each record of a test of the on-off mechanism and indicator required by R313-21-22(4)(c)(ii) shall be retained for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is

transferred or disposed of;

(C) Each record that is required by R313-21-22(4)(c)(iii) shall be retained for three years from the date of the recorded event or until the device is transferred or disposed of;

(v) shall immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 185 becquerel (0.005 uCi) or more removable radioactive material. The device may not be operated until it has been repaired by the manufacturer or other person holding a specific license to repair the device that was issued by the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State. The device and any radioactive material from the device may only be disposed of by transfer to a person authorized by a specific license to receive the radioactive material in the device or as otherwise approved by the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State. A report containing a brief description of the event and the remedial action taken; and, in the case of detection of 185 becquerel (0.005 uCi) or more removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use, must be furnished to the Director within 30 days. Under these circumstances, the criteria set out in R313-15-402 may be applicable, as determined by the Director on a case-by-case basis;

(vi) shall not abandon the device containing radioactive material;

(vii) shall not export the device containing radioactive materials except in accordance with 10 CFR 110;

(viii)(A) shall transfer or dispose of the device containing radioactive material only by export as provided by R313-21-22(4)(c)(vii), by transfer to another general licensee as authorized in R313-21-22(4)(c)(ix), to a person authorized to receive the device by a specific license issued under R313-22, to an authorized waste collector under R313-25, or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State, or a Licensing State , or as otherwise approved under R313-21-22(4)(c)(viii)(C);

(B) shall furnish a report to the Director within 30 days after transfer of a device to a specific licensee or export. The report must contain:

(I) the identification of the device by manufacturer's or initial transferor's name, model number, and serial number;

(II) the name, address, and license number of the person receiving the device, the license number is not applicable if exported; and

(III) the date of the transfer;

(C) shall obtain written approval from the Director before transferring the device to any other specific licensee not specifically identified in R313-21-22(4)(c)(viii)(A); however, a holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if the holder:

(I) verifies that the specific license authorizes the possession and use, or applies for and obtains an amendment to the license authorizing the possession and use;

(II) removes, alters, covers, or clearly and unambiguously augments the existing label (otherwise required by R313-21-22(4)(c)(i)) so that the device is labeled in compliance with R313-15-904; however, the manufacturer, model number, and serial number must be retained;

(III) obtains the manufacturer's or initial transferor's information concerning maintenance that would be applicable under the specific license (such as leak testing procedures); and

(IV) reports the transfer under R313-21-22(4)(c)(viii)(B);

(ix) shall transfer the device to another general licensee only if:

(A) the device remains in use at a particular location. In this case, the transferor shall give the transferee a copy of R313-21-22(4), R313-12-51, R313-15-1201, and R313-15-1202, and any safety documents identified in the label of the device. Within 30 days of the transfer, the transferor shall report to the Director:

(I) the manufacturer's or initial transferor's name;

(II) the model number and serial number of the device transferred;

(III) the transferee's name and mailing address for the location of use; and

(IV) the name, title, and phone number of the responsible individual identified by the transferee in accordance with R313-21-22(4)(c)(xii) to have knowledge of and authority to take actions to ensure compliance with the appropriate regulations and requirements; or

(B) the device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee;

(x) shall comply with the provisions of R313-15-1201 and R313-15-1202 for reporting radiation incidents, theft or loss of licensed material, but shall be exempt from the other requirements of R313-15 and R313-18;

(xi) shall respond to written requests from the Director to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by submitting a letter to the Director and provide written justification as to why it cannot comply;

(xii) shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard;

(xiii)(A) shall register, in accordance with R313-21-22(4)(c)(xiii)(B) and (C), devices containing at least 370 megabecquerel (ten mCi) of cesium-137, 3.7 megabecquerel (0.1 mCi) of strontium-90, 37 megabecquerel (one mCi) of cobalt-60, 3.7 megabecquerel (0.1 mCi) of radium-226, or 37 megabecquerel (one mCi) of americium-241 or any other transuranic, (elements with atomic number greater than uranium-92), based on the activity indicated on the label. Each address for a location of use, as described under R313-21-22(4)(c)(xiii)(C)(IV) represents a separate general licensee and requires a separate registration and fee;

(B) if in possession of a device meeting the criteria of R313-21-22(4)(c)(xiii)(A), shall register these devices annually with the Director and shall pay the fee required by R313-70. Registration shall include verifying, correcting, or adding, as appropriate, to the information provided in a request for registration received from the Director. The registration information must be submitted to the Director within 30 days of the date of the request for registration or as otherwise indicated in the request. In addition, a general licensee holding devices meeting the criteria of R313-21-22(4)(c)(xiii)(A) is subject to the bankruptcy notification requirement in R313-19-34(5) and (6);

(C) in registering devices, the general licensee shall furnish the following information and any other information specifically requested by the Director:

(I) name and mailing address of the general licensee;

(II) information about each device: the manufacturer or initial transferor, model number, serial number, the radioisotope

and activity as indicated on the label;

(III) name, title, and telephone number of the responsible person designated as a representative of the general licensee under R313-21-22(4)(c)(xii);

(IV) address or location at which the device(s) are used, stored, or both. For portable devices, the address of the primary place of storage;

(V) certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information; and

(VI) certification by the responsible representative of the general licensee that they are aware of the requirements of the general license; and

(D) persons generally licensed by the Nuclear Regulatory Commission, an Agreement State, or Licensing State with respect to devices meeting the criteria in R313-21-22(4)(c)(xiii)(A) are not subject to registration requirements if the devices are used in areas subject to Division jurisdiction for a period less than 180 days in any calendar year. The Director will not request registration information from such licensees;

(xiv) shall report changes to the mailing address for the location of use, including changes in the name of a general licensee, to the Director within 30 days of the effective date of the change. For a portable device, a report of address change is only required for a change in the device's primary place of storage; and

(xv) may not hold devices that are not in use for longer than 2 years. If devices with shutters are not being used, the shutter must be locked in the closed position. The testing required by R313-21-22(4)(c)(ii) need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they must be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in standby.

(d) The general license in R313-21-22(4)(a) does not authorize the manufacture or import of devices containing radioactive material.

(e) The general license provided in R313-21-22(4)(a) is subject to the provisions of R313-12-51 through R313-12-53, R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100.

(5) Luminous safety devices for aircraft.

(a) A general license is hereby issued to own, receive, acquire, possess and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

(i) each device contains not more than 370.0 gigabecquerel (10 Ci) of tritium or 11.1 gigabecquerel (300 mCi) of promethium-147; and

(ii) each device has been manufactured, assembled or initially transferred in accordance with a specific license issued by the Nuclear Regulatory Commission or an Agreement State, or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the Director or an Agreement State to the manufacturer or assembler of the device pursuant to licensing requirements equivalent to those in R313-22-75(5).

(b) Persons who own, receive, acquire, possess or use luminous safety devices pursuant to the general license in R313-21-22(5) are exempt from the requirements of R313-15 and R313-18, except that they shall comply with the provisions of R313-15-1201 and R313-15-1202.

(c) This general license does not authorize the manufacture, assembly, repair, or import of luminous safety devices containing tritium or promethium-147.

(d) This general license does not authorize the export of luminous safety devices containing tritium or promethium-147.

(e) This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

(f) This general license is subject to the provisions of R313-12-51 through R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100.

(6) Ownership of radioactive material. A general license is hereby issued to own radioactive material without regard to quantity. Notwithstanding any other provisions of R313-21, this general license does not authorize the manufacture, production, transfer, receipt, possession, use, import, or export of radioactive material except as authorized in a specific license.

(7) Calibration and reference sources.

(a) A general license is hereby issued to own, receive, acquire, possess, use and transfer, in the form of calibration or reference sources, americium-241, plutonium or radium-226 in accordance with the provisions of Subsections R313-21-22(7)(b) and (c), to a person who holds a specific license issued by the Director which authorizes that person to receive, possess, use and transfer radioactive material.

(b) The general license in Subsection R313-21-22(7)(a) applies only to calibration or reference sources which have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued by the Nuclear Regulatory Commission pursuant to 10 CFR 32.57 or 10 CFR 70.39 or which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the Director, or an Agreement State which authorizes manufacture of the sources for distribution to persons generally licensed, or in accordance with a specific license issued by a State with requirements equivalent to 10 CFR 32.57 or 10 CFR 70.39.

(c) The general license provided in Subsection R313-21-22(7)(a) is subject to the provisions of Sections R313-12-51 through R313-12-53, R313-12-70, and Rules R313-14, R313-19-34, R313-19-41, R313-19-61, R313-19-100, R313-15 and R313-18. In addition, persons who own, receive, acquire, possess, use or transfer one or more calibration or reference sources pursuant to the general license in Subsection R313-21-22(7)(a):

(i) shall not possess at any one time, at any one location of storage or use, more than 185.0 kilobecquerel (5 uCi) of americium-241, 185.0 kilobecquerel (5 uCi) of plutonium, or 185.0 kilobecquerel (5 uCi) of radium-226 in such sources;

(ii) shall not receive, possess, use or transfer a source unless the source, or the storage container, bears a label which includes one of the following statements or a substantially similar statement which contains the information called for in the following statement:

The receipt, possession, use and transfer of this source, Model No. ....., Serial No. ....., are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL

THIS SOURCE CONTAINS (AMERICIUM-241)(PLUTONIUM)(RADIUM-226)*

DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

.....

Typed or printed name of the manufacturer or initial transferor

NOTE: *Show the name of the appropriate material.

(iii) shall not transfer, abandon, or dispose of a source except by transfer to a person authorized by a license issued by the Director, the Nuclear Regulatory Commission, or an Agreement State to receive the source;

(iv) shall store a source, except when the source is being used, in a closed container adequately designed and constructed to contain americium-241, plutonium, or radium-226 which might otherwise escape during storage; and

(v) shall not use a source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(d) A general license issued pursuant to Subsection R313-21-22(7)(a) does not authorize the manufacture, import, or export of calibration or reference sources containing americium-241, plutonium, or radium-226.

(8) RESERVED.

(9) General license for use of radioactive material for certain in vitro clinical or laboratory testing.*

NOTE: *The New Drug provisions of the Federal Food, Drug and Cosmetic Act also govern the availability and use of any specific diagnostic drug in interstate commerce.

(a) A general license is hereby issued to any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital to receive, acquire, possess, transfer or use, for the following stated tests, in accordance with the provisions of R313-21-22(9) (b), (c), (d), (e), and (f) the following radioactive materials in prepackaged units for use in in-vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

(i) iodine-125, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(ii) iodine-131, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(iii) carbon-14, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(iv) hydrogen-3 (tritium), in units not exceeding 1.85 megabecquerel (50 uCi) each;

(v) iron-59, in units not exceeding 740.0 kilobecquerel (20 uCi) each;

(vi) cobalt-57, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(vii) selenium-75, in units not to exceed 370.0 kilobecquerel (10 uCi) each; or

(viii) mock iodine-125, reference or calibration sources, in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 185.0 becquerel (0.005 uCi) of americium-241 each.

(b) A person shall not receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by R313-21-22(9)(a) until that person has filed form DWMRC-07, "Registration Form-In Vitro Testing with Radioactive Material Under General License," with the Director and received a Certificate of Registration signed by the Director, or until that person has been authorized pursuant to R313-32 to use radioactive material under the general license in R313-21-22(9). The physician, veterinarian, clinical laboratory or hospital shall furnish on form DWMRC-07 the following information and other information as may be required by that form:

(i) name and address of the physician, veterinarian, clinical laboratory or hospital;

(ii) the location of use; and

(iii) a statement that the physician, veterinarian, clinical laboratory or hospital has appropriate radiation measuring instruments to carry out in vitro clinical or laboratory tests with radioactive material as authorized under the general license in Subsection R313-21-22(9)(a) and that the tests will be performed only by personnel competent in the use of radiation measuring instruments and in the handling of the radioactive material.

(c) A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by Subsection R313-21-22(9)(a) shall comply with the following:

(i) The general licensee shall not possess at any one time, pursuant to the general license in Subsection R313-21-22(9)(a) at any one location of storage or use, a total amount of iodine-125, iodine-131, selenium-75, iron-59, cobalt-57, or any combination, in excess of 7.4 megabecquerel (200 uCi).

(ii) The general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection.

(iii) The general licensee shall use the radioactive material only for the uses authorized by Subsection R313-21-22(9)(a).

(iv) The general licensee shall not transfer the radioactive material except to a person authorized to receive it pursuant to a license issued by the Director, the Nuclear Regulatory Commission, an Agreement State or Licensing State, nor transfer the radioactive material in a manner other than in the unopened, labeled shipping container as received from the supplier.

(v) The general licensee shall dispose of the Mock Iodine-125 reference or calibration sources described in Subsection R313-21-22(9)(a)(viii) as required by Section R313-15-1001.

(vi) The general licensee shall pay annual fees pursuant to Rule R313-70.

(d) The general licensee shall not receive, acquire, possess, or use radioactive material pursuant to Subsection R313-21-22(9)(a):

(i) Except as prepackaged units which are labeled in accordance with the provision of a specific license issued pursuant to R313-22-75(7) or in accordance with the provisions of a specific license issued by the Nuclear Regulatory Commission, or an Agreement State, or before November 30, 2007, in accordance with the provisions of a specific license issued by a State with comparable provisions to 10 CFR 32.71 (2010) which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3(tritium), iron-59, selenium-75, cobalt-57, or Mock Iodine-125 to persons generally licensed under Subsection R313-21-22(9) or its equivalent, and

(ii) Unless the following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

"This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians in the practice of veterinary medicine, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority.

.....

Name of Manufacturer"

(e) The physician, veterinarian, clinical laboratory or hospital possessing or using radioactive material under the general license in Subsection R313-21-22(9)(a) shall report in writing to the Director, changes in the information previously furnished in the "Registration Form-In Vitro Testing with Radioactive Material Under General License", form DRC -07. The report shall be furnished within 30 days after the effective date of the change.

(f) Any person using radioactive material pursuant to the general license of Subsection R313-21-22(9)(a) is exempt from the requirements of Rules R313-15 and R313-18 with respect to radioactive material covered by that general license, except that persons using the Mock Iodine-125 described in Subsection

R313-21-22(9)(a)(viii) shall comply with the provisions of Sections R313-15-1001, R313-15-1201 and R313-15-1202.

(10) Ice Detection Devices.

(a) A general license is hereby issued to own, receive, acquire, possess, use and transfer strontium-90 contained in ice detection devices, provided each device contains not more than 1.85 megabecquerel (50 uCi) of strontium-90 and each device has been manufactured or initially transferred in accordance with a specific license issued by the Nuclear Regulatory Commission, or each device has been manufactured in accordance with the specifications contained in a specific license issued by the Director, an Agreement State, or a Licensing State to the manufacturer of the device pursuant to licensing requirements equivalent to those in 10 CFR 32.61.

(b) Persons who own, receive, acquire, possess, use or transfer strontium-90 contained in ice detection devices pursuant to the general license in Subsection R313-21-22(10)(a):

(i) shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from over-heating to the device, discontinue use of the device until it has been inspected, tested for leakage and repaired by a person holding a specific license from the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State to manufacture or service the device; or shall dispose of the device pursuant to the provisions of Section R313-15-1001;

(ii) shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereon; and

(iii) are exempt from the requirements of Rules R313-15 and R313-18 except that the persons shall comply with the provisions of Sections R313-15-1001, R313-15-1201 and R313-15-1202.

(c) This general license does not authorize the manufacture, assembly, disassembly, repair, or import of strontium-90 in ice detection devices.

(d) This general license is subject to the provision of Sections R313-12-51 through R313-12-53, R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100 of these rules.

KEY: radioactive materials, general licenses, source materials
August 26, 2015 19-3-104
Notice of Continuation January 17, 2017

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-24. Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements.
R313-24-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements for possession and use of source material in milling operations such as conventional milling, in-situ leaching, or heap-leaching. The rule includes requirements for the possession of byproduct material, as defined in Section R313-12-3 (see "byproduct material" definition (b)), from source material milling operations, as well as, possession and maintenance of a facility in standby mode. In addition, requirements are prescribed for the receipt of byproduct material from other persons for possession and disposal. The rule also prescribes requirements for receipt of byproduct material from other persons for possession and disposal incidental to the byproduct material generated by the licensee's source material milling operations.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

(3) The requirements of Rule R313-24 are in addition to, and not substitution for, the other applicable requirements of Title R313. In particular, the provisions of Rules R313-12, R313-15, R313-18, R313-19, R313-21, R313-22, and R313-70 apply to applicants and licensees subject to Rule R313-24.

(4) See R313-17-4 for special procedures for decisions associated with licenses for activity which results in the production or disposal of byproduct material.

R313-24-2. Scope.

(1) The requirements in Rule R313-24 apply to source material milling operations, byproduct material, and byproduct material disposal facilities.

R313-24-3. Environmental Analysis.

(1) Each new license application, renewal, or major amendment shall contain an environmental report describing the proposed action, a statement of its purposes, and the environment affected. The environmental report shall present a discussion of the following:

(a) An assessment of the radiological and nonradiological impacts to the public health from the activities to be conducted pursuant to the license or amendment;

(b) An assessment of any impact on waterways and groundwater resulting from the activities conducted pursuant to the license or amendment;

(c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to the license or amendment; and

(d) Consideration of the long-term impacts including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to the license or amendment.

(2) Commencement of construction prior to issuance of the license or amendment shall be grounds for denial of the license or amendment.

(3) The Director shall provide a written analysis of the environmental report which shall be available for public notice and comment pursuant to R313-17-2.

R313-24-4. Clarifications or Exceptions.

For the purposes of Rule R313-24, 10 CFR 40.2a through 40.4; 40.12; 40.20(a); 40.21; 40.26(a) through (c); 40.31(h); the introductory paragraph of 40.36 and 40.36(a),(b),(d) and (f); 40.41(c); the introduction to 40.42(k) and 40.42(k)(3)(i); 40.46; 40.61(a) and (b); 40.65; and Appendix A to Part 40 (2015) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion and substitution of the following:

(a) Exclude 10 CFR 40.26(c)(1) and replace with "(1) The provisions of Sections R313-12-51, R313-12-52, R313-12-53, R313-19-34, R313-19-50, R313-19-61, R313-24-1, Rules R313-14, R313-15, R313-18, and R313-24 (incorporating 10 CFR 40.2a, 40.3, 40.4, and 40.26 by reference)";

(b) In Appendix A to 10 CFR 40, exclude Criterion 5B(1) through 5H, Criterion 7A, Criterion 13, and replace the excluded Criterion with "Utah Administrative Code, R317-6, Ground Water Quality Protection"; and

(c) In Appendix A to 10 CFR 40, exclude Criterion 11A through 11F and Criterion 12;

(2) The substitution of the following:

(a) "10 CFR 40" for reference to "this part" as found throughout the incorporated text;

(b) "Director" for reference to "Commission" in the first and fourth references contained in 10 CFR 40.2a, in 10 CFR 40.3, 40.20(a), 40.26, 40.36(f), 40.41(c), 40.46 (a), 40.61, and 40.65; and "Director" for reference to "NRC" in 10 CFR 40.36(b);

(c) "Rules R313-19, R313-21, or R313-22" for "Section 62 of the Act" as found in 10 CFR 40.12(a);

(d) "Rule R313-15-402" for reference to "10 CFR 20.1402" and "Rule R313-15-403" for reference to "10 CFR 20.1403" in 10 CFR 40.36(d);

(e) "Rule R313-15-1109" for reference to "10 CFR 20.2108" in 10 CFR 40.36(f);

(f) "Rules R313-21 or R313-22" for reference to "the regulations in this part" in 10 CFR 40.41(c);

(g) "Section R313-19-100" for reference to "part 71 of this chapter" as found in 10 CFR 40.41(c);

(h) In 10 CFR 40.42(k)(3)(i), "R313-15-401 through R313-15-406" for reference to "10 CFR part 20, subpart E";

(i) "source material milling" for reference to "uranium milling, in production of uranium hexafluoride, or in a uranium enrichment facility" as found in 10 CFR 40.65(a);

(j) "Director" for reference to "appropriate NRC Regional Office shown in Appendix D to 10 CFR part 20 of this chapter, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in 10 CFR 65(a)(1);

(k) "require the licensee to" for reference to "require to" in 10 CFR 40.65(a)(1); and

(l) In Appendix A to 10 CFR part 40, the following substitutions:

(i) "R313-12-3" for reference to "Sec. 20.1003 of this chapter" as found in 10 CFR 40.36(f) and in the first paragraph of the introduction to Appendix A;

(ii) "Utah Administrative Code, Rule R317-6, Ground Water Quality Protection" for ground water standards in "Environmental Protection Agency in 40 CFR part 192, subparts D and E" as found in the Introduction, paragraph 4; or "Environmental Protection Agency in 40 CFR part 192, subparts D and E (48 FR 45926; October 7, 1983)" as found in Criterion 5;

(iii) "Director as defined in Subsection 19-5-102(6)" for reference to "Commission" in the definition of "compliance period," in paragraph five of the introduction and in Criterion 5A(3);

(iv) "Director" for reference to "Commission" in the definition of "closure plan", in paragraph five of the introduction, and in Criterions 6(2), 6(4), 6(6), 6A(2), 6A(3), 9, and 10 of Appendix A;

(v) "license issued by the Director" for reference to "Commission license" in the definition of "licensed site," in the introduction to Appendix A;

(vi) "Director" for reference to "NRC" in Criterion 4D;

(vii) "representatives of the Director" for reference to "NRC staff" in Criterion 6(6);

(viii) "Director-approved" for reference to "Commission-

approved" in Criterion 6A(1) and Criterion 9;

(ix) "Director" for reference to "appropriate NRC regional office as indicated in Criterion 8A" as found, Criterion 8, paragraph 2 or for reference to "appropriate NRC regional office as indicated in Appendix D to 10 CFR part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in Criterion 8A; and

(x) "Director" for reference to "the Commission or the State regulatory agency" in Criterion 9, paragraph 2.

KEY: environmental analysis, uranium mills, tailings, byproduct material
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R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-30. Therapeutic Radiation Machines.
R313-30-1. Scope and Applicability.

(1) R313-30 establishes requirements, for which the registrant is responsible, for use of therapeutic radiation machines. The provisions of R313-30 are in addition to, and not in substitution for, other applicable provisions of these rules.

(2) The use of therapeutic radiation machines shall be by, or under the supervision of, a licensed practitioner of the healing arts who meets the training and experience criteria established by R313-30-3(3).

(3) R313-30 shall only apply to therapeutic radiation machines which accelerate electrons into a target to produce bremsstrahlung or which accelerate electrons to produce a clinically useful electron beam.

R313-30-2. Definitions.

As used in R313-30, the following definitions apply:

"Absorbed dose (D)" means the mean energy imparted by ionizing radiation to matter. Absorbed dose is determined as the quotient of dE by dM, where dE is the mean energy imparted by ionizing radiation to matter of mass dM. The SI unit of absorbed dose is joule per kilogram and the special name of the unit of absorbed dose is the gray (Gy). The previously used special unit of absorbed dose (rad) is being replaced by the gray.

"Absorbed dose rate" means absorbed dose per unit time, for machines with timers, or dose monitor unit per unit time for linear accelerators.

"Accessible surfaces" means surface of equipment or of an equipment part that can be easily or accidentally touched by persons without the use of a tool, or without opening an access panel or door.

"Added filtration" means filtration which is in addition to the inherent filtration.

"Air kerma (K)" means the kinetic energy released in air by ionizing radiation. Kerma is determined as the quotient of dE by dM, where dE is the sum of the initial kinetic energies of the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is the gray (Gy).

"Barrier" See "Protective barrier."

"Beam axis" means the axis of rotation of the radiation head.

"Beam-limiting device" means a field defining collimator which provides a means to restrict the dimensions of the useful beam.

"Beam monitoring system" means a system designed and installed in the radiation head to detect and measure the radiation present in the useful beam.

"Beam scattering foil" means a thin piece of material, usually metallic, placed in the beam to scatter a beam of electrons in order to provide a more uniform electron distribution in the useful beam.

"Bent beam linear accelerator" means a linear accelerator geometry in which the accelerated electron beam must change direction by passing through a bending magnet.

"Changeable filters" means filters, exclusive of inherent filtration, which can be removed from the useful beam through electronic, mechanical, or physical processes.

"Contact therapy system" means a therapeutic radiation machine with a short target to skin distance (TSD), usually less than five centimeters.

"Detector" See "Radiation detector."

"Dose monitor unit (DMU)" means a unit response from the beam monitoring system from which the absorbed dose can be calculated.

"External beam radiation therapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

"Field-flattening filter" means a filter used to homogenize the absorbed dose rate over the radiation field.

"Filter" means material placed in the useful beam to change beam quality in therapeutic radiation machines subject to R313-30-6.

"Gantry" means that part of a therapeutic radiation machine supporting and allowing movements of the radiation head about a center of rotation.

"Gray (Gy)" means the SI unit of absorbed dose, kerma, and specific energy imparted equal to 1 joule per kilogram. The previous unit of absorbed dose (rad) is being replaced by the gray. Note that 1 Gy equals 100 rad.

"Half-value layer (HVL)" means the thickness of a specified material which attenuates x-radiation or gamma radiation to the extent that the air kerma rate, exposure rate or absorbed dose rate is reduced to one-half of the value measured without the material at the same point.

"Interlock" means a device preventing the start or continued operation of equipment unless certain predetermined conditions prevail.

"Interruption of irradiation" means the stopping of irradiation with the possibility of continuing irradiation without resetting of operating conditions at the control panel.

"Irradiation" means the exposure of a living being or matter to ionizing radiation.

"Isocenter" means the center of the sphere through which the useful beam axis passes while the gantry moves through its full range of motions.

"Kilovolt (kV) or kilo electron volt (keV)" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one thousand volts in a vacuum. Current convention is to use kV for photons and keV for electrons.

"Lead equivalent" means the thickness of the material in question affording the same attenuation, under specified conditions, as lead.

"Leakage radiation" means radiation emanating from the therapeutic radiation machine except for the useful beam.

"Light field" means the area illuminated by light, simulating the radiation field.

"mA" means milliampere.

"Megavolt (MV) or mega electron volt (MeV)" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one million volts in a vacuum. Current convention is to use MV for photons and MeV for electrons.

"Monitor unit (MU)" See "Dose monitor unit."

"Moving beam radiation therapy" means radiation therapy with continuous displacement of one or more mechanical axes relative to the patient during irradiation. It includes arc therapy, skip therapy, conformal therapy and rotational therapy.

"Nominal treatment distance" means:

(a) For electron irradiation, the distance from the scattering foil, virtual source, or exit window of the electron beam to the entrance surface of the irradiated object along the central axis of the useful beam.

(b) For x-ray irradiation, the virtual source or target to isocenter distance along the central axis of the useful beam. For non-isocentric equipment, this distance shall be that specified by the manufacturer.

"Patient" means an individual subjected to machine produced external beam radiation for the purposes of medical therapy.

"Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

"Periodic quality assurance check" means a procedure which is performed to ensure that a previous calibration

continues to be valid.

"Phantom" means an object which attenuates, absorbs, and scatters ionizing radiation in the same quantitative manner as tissue.

"Practical range of electrons" corresponds to classical electron range where the only remaining contribution to dose is from bremsstrahlung x-rays.

"Primary dose monitoring system" means a system which will monitor the useful beam during irradiation and which will terminate irradiation when a pre-selected number of dose monitor units have been delivered.

"Primary protective barrier" See "Protective barrier."

"Protective barrier" means a barrier of radiation absorbing materials used to reduce radiation exposure. The types of protective barriers are as follows:

(a) "Primary protective barrier" means the material, excluding filters, placed in the useful beam or a barrier which attenuates the primary beam.

(b) "Secondary protective barrier" means the material which attenuates stray radiation.

"Radiation detector" means a device which, in the presence of radiation provides, by either direct or indirect means a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

"Radiation field" See "Useful beam."

"Radiation head" means the structure from which the useful beam emerges.

"Radiation Therapy Physicist" means an individual qualified in accordance with R313-30-3(4).

"Redundant beam monitoring system" means a combination of two dose monitoring systems in which each system is designed to terminate irradiation in accordance with a pre-selected number of dose monitor units.

"Scattered radiation" means ionizing radiation emitted by interaction of ionizing radiation with matter, the interaction being accompanied by a change in direction of the radiation.

"Secondary dose monitoring system" means a system which will terminate irradiation in the event of failure of the primary dose monitoring system.

"Secondary protective barrier" See "Protective barrier."

"Shadow tray" means a device attached to the radiation head to support auxiliary beam blocking material.

"Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

"Sievert (Sv)" means the SI unit of dose equivalent. The unit of dose equivalent is the joule per kilogram. The previous unit of dose equivalent (rem) is being replaced by the sievert. Note that 1 Sv equals 100 rem.

"Simulator, or radiation therapy simulation system" means an x-ray system intended for localizing the volume to be exposed during radiation therapy and reproducing the position and size of the therapeutic irradiation field.

"Source" means the region or material from which the radiation emanates.

"Source-skin distance (SSD)" See "Target-skin distance."

"Stationary beam radiation therapy" means radiation therapy without displacement of the radiation source relative to the patient during irradiation.

"Stray radiation" means the sum of leakage and scattered radiation.

"Target" means that part of an x-ray tube or particle accelerator onto which is directed a beam of accelerated particles to produce ionizing radiation or other particles.

"Target-skin distance (TSD)" means the distance measured along the beam axis from the center of the front surface of the x-ray target or electron virtual source to the surface of the irradiated object or patient.

"Tenth-value layer (TVL)" means the thickness of a specified material which, x-radiation or gamma radiation to the extent that the air kerma rate, exposure rate or absorbed dose rate is reduced to one-tenth of the value measured without the material at the same point.

"Termination of irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

"Therapeutic radiation machine" means x-ray or electron-producing equipment designed and used for external beam radiation therapy.

"Tube" means an x-ray tube, unless otherwise specified.

"Tube housing assembly" means the tube housing with tube installed. It includes high-voltage and filament transformers and other appropriate elements that are contained within the tube housing.

"Useful beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the exposure controls are in a mode to cause the therapeutic radiation machine to produce radiation.

"Virtual source" means a point from which radiation appears to originate.

"Wedge filter" means a filter which effects continuous change in transmission over all or a part of the radiation field.

"X-ray tube" means an electron tube which is designed to be used primarily for the production of x-rays.

R313-30-3. General Administrative Requirements for Facilities Using Therapeutic Radiation Machines.

(1) Administrative Controls. The registrant shall be responsible for directing the operation of the therapeutic radiation machines which have been registered with the Director. The registrant or the registrant's agent shall ensure that the requirements of R313-30 are met in the operation of the therapeutic radiation machines.

(2) A therapeutic radiation machine which does not meet the provisions of these rules shall not be used for irradiation of patients.

(3) Training for External Beam Radiation Therapy Authorized Users. The registrant for a therapeutic radiation machine subject to R313-30-6 or R313-30-7 shall require the authorized user to be a physician who:

(a) Is certified in:

(i) Radiology or therapeutic radiology by the American Board of Radiology; or

(ii) Radiation oncology by the American Osteopathic Board of Radiology; or

(iii) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(iv) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, and has completed 200 hours of instruction in basic radiation techniques applicable to the use of an external beam radiation therapy unit, 500 hours of supervised work experience, and a minimum of three years of supervised clinical experience.

(i) To satisfy the requirement for instruction, the classroom and laboratory training shall include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology.

(ii) To satisfy the requirement for supervised work experience, training shall be under the supervision of an authorized user and shall include:

(A) Review of the full calibration measurements and periodic quality assurance checks;

(B) Preparing treatment plans and calculating treatment times;

(C) Using administrative controls to prevent misadministrations;

(D) Implementing emergency procedures to be followed in the event of the abnormal operation of a external beam radiation therapy unit or console; and

(E) Checking and using radiation survey meters.

(iii) To satisfy the requirement for a period of supervised clinical experience, training shall include one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user. The supervised clinical experience shall include:

(A) Examining individuals and reviewing their case histories to determine their suitability for external beam radiation therapy treatment, and limitations and contraindications;

(B) Selecting proper dose and how it is to be administered;

(C) Calculating the external beam radiation therapy doses and collaborating with the authorized user in the review of patients' progress and consideration of the need to modify originally prescribed doses as warranted by patients' reaction to radiation; and

(D) Post-administration follow-up and review of case histories.

(iv) An individual who satisfies the requirements in R313-30-3(b), but not R313-30-3(a), must submit an application to the Director and must satisfy the requirements in R313-30-3(a) within one year of initial application to the Director.

(c) After December 31, 1994, a physician shall not act as an authorized user for a therapeutic radiation machine until the physician's training has been reviewed and approved by the Director.

(4) Training for Radiation Therapy Physicist. The registrant for a therapeutic radiation machine subject to R313-30-6 or R313-30-7 shall require the Radiation Therapy Physicist to:

(a) Satisfy the provisions of R313-16, as a provider of radiation services in the area of calibration and compliance surveys of external beam radiation therapy units; and

(b) Be certified by the American Board of Radiology in:

(i) Therapeutic radiological physics; or

(ii) Roentgen-ray and gamma-ray physics; or

(iii) X-ray and radium physics; or

(iv) Radiological physics; or

(c) Be certified by the American Board of Medical Physics in Radiation Oncology Physics; or

(d) Be certified by the Canadian College of Medical Physics; or

(e) Hold a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and have completed one year of full time training in therapeutic radiological physics and also one year of full time work experience under the supervision of a Radiation Therapy Physicist at a medical institution. To meet this requirement, the individual shall have performed the tasks listed in R313-30-4(1), R313-30-6(16), R313-30-7(19), R313-30-6(17), and R313-30-7(20) under the supervision of a Radiation Therapy Physicist during the year of work experience.

(f) Notwithstanding the provisions of R313-30-3(4)(e), certification pursuant to R313-30-3(4)(b), (c) or (d) shall be required on or before December 31, 1999 for all persons currently qualifying as a Radiation Therapy Physicist pursuant to R313-30-3(4)(e).

(5) Qualifications of Operators.

(a) Individuals who will be operating a therapeutic radiation machine for medical use shall be American Registry of Radiologic Technologists (ARRT) Registered Radiation Therapy Technologists.

(b) The names and training of personnel currently operating a therapeutic radiation machine shall be kept on file at the facility. Information on former operators shall be retained for a period of at least two years beyond the last date they were authorized to operate a therapeutic radiation machine at that facility.

(6) Written safety procedures and rules shall be developed by a Radiation Therapy Physicist and shall be available in the control area of a therapeutic radiation machine, including restrictions required for the safe operation of the particular therapeutic radiation machine. The operator shall be familiar with these rules as required in R313-18-12(1)(c).

(7) Individuals shall not be exposed to the useful beam except for medical therapy purposes. Exposure for medical therapy purposes shall be ordered in writing by an authorized user who is specifically identified on the Certificate of Registration. This provision specifically prohibits deliberate exposure of an individual for training, demonstration or other non-healing-arts purposes.

(8) Visiting Authorized User. Notwithstanding the provisions of R313-30-3(7), a registrant may permit a physician to act as a visiting authorized user under the term of the registrant's Certificate of Registration for up to 60 days per calendar year under the following conditions:

(a) The visiting authorized user has the prior written permission of the registrant's management and, if the use occurs on behalf of an institution, the institution's Radiation Safety Committee; and

(b) The visiting authorized user meets the requirements established for authorized users in R313-30-3(3)(a) and R313-30-3(3)(b); and

(c) The registrant maintains copies of records specified by R313-30-3(8) for five years from the date of the last visit.

(9) Individuals associated with the operation of a therapeutic radiation machine shall be instructed in and shall comply with the provisions of the registrant's quality management program. In addition to the requirements of R313-30, these individuals are also subject to the requirements of R313-15-201, R313-15-202, R313-15-205 and R313-15-502.

(10) Information and Maintenance Record and Associated Information. The registrant shall maintain the following information in a separate file or package for therapeutic radiation machines, for inspection by the representatives of the Director:

(a) Report of acceptance testing;

(b) Records of surveys, calibrations, and periodic quality assurance checks of the therapeutic radiation machine required by R313-30, as well as the names of persons who performed the activities;

(c) Records of major maintenance and modifications performed on the therapeutic radiation machine after the effective date of these rules, as well as the names of persons who performed the services; and

(d) Signature of person authorizing the return of therapeutic radiation machine to clinical use after service, repair, or upgrade.

(11) Records Retention. Records required by R313-30 shall be retained until disposal is authorized by the Director unless another retention period is specifically authorized in R313-30. Required records shall be retained in an active file from at least the time of generation until the next inspection by a representative of the Director. A required record generated prior to the last inspection may be microfilmed or otherwise

archived as long as a complete copy of said record can be retrieved until the Director authorizes final disposal.

R313-30-4. General Technical Requirements for Facilities Using Therapeutic Radiation Machines.

(1) Protection Surveys.

(a) The registrant shall ensure that radiation protection surveys of new facilities, and existing facilities not previously surveyed are performed with an operable radiation measurement survey instrument calibrated in accordance with R313-30-8. The radiation protection survey shall be performed by, or under the direction of, a Radiation Therapy Physicist or a Certified Health Physicist and shall verify that, with the therapeutic radiation machine in a "BEAM-ON" condition, with the largest clinically available treatment field and with a scattering phantom in the useful beam of radiation:

(i) Radiation levels in restricted areas are not likely to cause personnel exposures in excess of the limits specified in R313-15-201(1); and

(ii) Radiation levels in unrestricted areas do not exceed the limits specified in R313-15-301(1).

(b) In addition to the requirements of R313-30-4(1)(a), a radiation protection survey shall also be performed prior to subsequent medical use and:

(i) After making changes in the treatment room shielding;

(ii) After making changes in the location of the therapeutic radiation machine within the treatment room;

(iii) After relocation of, or modification of, the therapeutic radiation machine; or

(iv) Before using the therapeutic radiation machine in a manner that could result in increased radiation levels in areas outside the external beam radiation therapy treatment room.

(c) The survey record shall indicate instances where the facility, in the opinion of the Radiation Therapy Physicist or a Certified Health Physicist, is in violation of applicable radiation protection rules. The survey record shall also include the date of the measurements, the reason the survey is required, the manufacturer's name, model number and serial number of the therapeutic radiation machine, the instruments used to measure radiation levels, a plan of the areas surrounding the treatment room that were surveyed, the measured dose rate at several points in areas expressed in microsieverts, millirems, per hour, the calculated maximum level of radiation over a period of one week for restricted and unrestricted areas, and the signature of the individual responsible for conducting the survey;

(d) If the results of the surveys required by R313-30-4(1)(a) or R313-30-4(1)(b) indicate radiation levels in excess of the respective limit specified in R313-30-4(1)(a), the registrant shall lock the control in the "OFF" position and not use the unit:

(i) Except as may be necessary to repair, replace, or test the therapeutic radiation machine, the therapeutic radiation machine shielding, or the treatment room shielding; or

(ii) Until the registrant has received a written approval from the Director.

(2) Modification of Radiation Therapy Unit or Room Before Beginning a Treatment Program. If the survey required by R313-30-4(1) indicates that an individual in an unrestricted area may be exposed to levels of radiation greater than those permitted by R313-15-301(1) of these rules, before beginning the treatment program the registrant shall:

(a) Either equip the unit with beam direction interlocks or add additional radiation shielding to ensure compliance with R313-15-301(1) of these rules;

(b) Perform the survey required by R313-30-4(1) again; and

(c) Include in the report required by R313-30-4(4) the results of the initial survey, a description of the modification made to comply with R313-30-4(2)(a), and the results of the second survey; or

(d) Request and receive a registration amendment under R313-15-301(3) of these rules that authorizes radiation levels in unrestricted areas greater than those permitted by R313-15-301(1) of these rules.

(3) Possession of Survey Instruments. Facility locations authorized to use a therapeutic radiation machine in accordance with R313-30-6 and R313-30-7 shall possess appropriately calibrated portable monitoring equipment. As a minimum, the equipment shall include a portable radiation measurement survey instrument capable of measuring dose rates over the range 10 uSv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The survey instruments shall be operable and calibrated in accordance with R313-30-8.

(4) Reports of External Beam Radiation Therapy Surveys and Measurements. The registrant for a therapeutic radiation machine subject to R313-30-6 or R313-30-7 shall furnish a copy of the records required in R313-30-4(1) and R313-30-4(2) to the Director within 30 days following completion of the action that initiated the record requirement.

R313-30-5. Quality Management Program.

(1) In addition to the definitions in R313-30-2, the following definitions are applicable to a quality management program:

"Course" means the entire treatment consisting of multiple fractions as prescribed in the written directive.

"Misadministration" means the administration of an external beam radiation therapy dose:

(a) Involving the wrong patient, wrong treatment modality, or wrong treatment site;

(b) When the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than ten percent of the total prescribed dose;

(c) When the calculated weekly administered dose differs from the weekly prescribed dose by more than 30 percent; or

(d) When the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose;

"Prescribed dose" means the total dose and dose per fraction as documented in the written directive.

"Recordable event" means the administration of an external beam radiation therapy dose when the calculated weekly administered dose differs by 15 percent or more from the weekly prescribed dose;

"Written directive" means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of radiation, containing the following information: total dose, dose per fraction, treatment site and overall treatment period.

(2) Scope and Applicability. Applicants or registrants subject to R313-30-6 or R313-30-7 shall establish and maintain a written quality management program to provide high confidence that radiation will be administered as directed by the authorized user. The quality management program shall include written policies and procedures to meet the following specific objectives:

(a) Prior to administration, a written directive is prepared for an external beam radiation therapy dose;

(i) Notwithstanding R313-30-5(2)(a), a written revision to an existing written directive may be made provided that the revision is dated and signed by an authorized user prior to administration of the external beam radiation therapy dose or the next external beam radiation therapy fractional dose;

(ii) Notwithstanding R313-30-5(2)(a), if, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive shall be acceptable, provided that the oral revision is documented

immediately in the patient's record and a revised written directive is signed by an authorized user within 48 hours of the oral revision;

(iii) Notwithstanding R313-30-5(2)(a), if, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive shall be acceptable, provided that the information contained in the oral directive is documented immediately in the patient's record and a written directive is prepared and signed by an authorized user within 24 hours of the oral directive.

(b) Prior to the administration of a course of radiation treatments, the patient's identity is verified, by more than one method, as the individual named in the written directive;

(c) External beam radiation therapy final plans of treatment and related calculations are in accordance with the respective written directives;

(d) An administration is in accordance with the written directive; and

(e) Unintended deviations from the written directive is identified and evaluated, and appropriate action are taken.

(3) Development of Quality Management Program.

(a) An application for registration subject to R313-30-6 or R313-30-7 shall include a quality management program that specifies staff, duties and responsibilities, and equipment and procedures as part of the application required by R313-16 of these rules. The registrant shall implement the program upon issuance of a Certificate of Registration by the Director;

(b) Existing registrants subject to R313-30-6 or R313-30-7 shall submit to the Director a written certification that a quality management program has been implemented by December 31, 1994.

(4) As a part of the quality management program, the registrant shall:

(a) Develop procedures for, and conduct a review of, the quality management program including, since the last review, an evaluation of a representative sample of patient administrations, recordable events, and misadministrations to verify compliance with the quality management program;

(b) Conduct these reviews annually. The intervals should not exceed 12 months and shall not exceed 13 months;

(c) Evaluate these reviews to determine the effectiveness of the quality management program and, if required, make modifications to meet the requirements of R313-30-5(2); and

(d) Maintain records of these reviews, including the evaluations and findings of the reviews, in a form that can be readily audited, for three years.

(5) The registrant shall evaluate and respond, within 30 days after discovery of the recordable event, to recordable events by:

(a) Assembling the relevant facts including the cause;

(b) Identifying what corrective actions are required to prevent recurrence; and

(c) Retaining a record, in a form that can be readily audited, for three years, of the relevant facts and what corrective actions were taken.

(6) The registrant shall retain:

(a) Written directives; and

(b) A record of administered radiation doses, in a form that can be readily audited, for three years after the date of administration.

(7) The registrant may make modifications to the quality management program to increase the program's efficiency provided the program's effectiveness is not decreased.

(8) The registrant shall evaluate misadministrations and shall take the following actions in response to a misadministration:

(a) Notify the Director by telephone no later than the next calendar day after discovery of the misadministration;

(b) Submit a written report to the Director within 15 days after discovery of the misadministration. The written report shall include: the registrant's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the patient; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the registrant notified the patient or the patient's responsible relative or guardian, this person will subsequently be referred to as "the patient," and if not, why not; and if the patient was notified, what information was provided to the patient. The report shall not include the patient's name or other information that could lead to identification of the patient;

(c) Notify the referring physician and also notify the patient of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the registrant either that the physician will inform the patient, or that, based on medical judgment, telling the patient would be harmful. The registrant is not required to notify the patient without first consulting the referring physician. If the referring physician or patient cannot be reached within 24 hours, the registrant shall notify the patient as soon as possible thereafter. The registrant shall not delay appropriate medical care for the patient, including necessary remedial care as a result of the misadministration, because of a delay in notification;

(d) Retain a record of misadministrations for five years. The record shall contain the names of individuals involved; including the prescribing physician, allied health personnel, the patient, and the patient's referring physician; the patient's social security number or identification number if one has been assigned; a brief description of the event; why it occurred; the effect on the patient; what improvements are needed to prevent recurrence; and the actions taken to prevent recurrence; and

(e) If the patient was notified, furnish, within 15 days after discovery of the misadministration, a written report to the patient by sending either a copy of the report that was submitted to the Director, or a brief description of both the event and the consequences as they may effect the patient, provided a statement is included that the report submitted to the Director can be obtained from the registrant;

(9) Aside from the notification requirement, nothing in R313-30-5(8) affects the rights or duties of registrants and physicians in relation to patients, the patient's responsible relatives or guardians, or to others.

R313-30-6. Therapeutic Radiation Machines of Less Than 500 kV.

(1) Leakage Radiation. When the x-ray tube is operated at its maximum rated tube current for the maximum kV, the leakage air kerma rate shall not exceed the value specified at the distance specified for that classification of therapeutic radiation machine:

(a) Systems 5-50 kV. The leakage air kerma rate measured at a position five centimeters from the tube housing assembly shall not exceed 1 mGy (100 mrad) in one hour.

(b) Systems greater than 50 and less than 500 kV. The leakage air kerma rate measured at a distance of one meter from the source in every direction shall not exceed 1 cGy (1 rad) in one hour. This air kerma rate measurement may be averaged over areas no larger than 100 square centimeters. In addition, the air kerma rate at a distance of five centimeters from the surface of the tube housing assembly shall not exceed 30 cGy (30 rad) per hour.

(2) Permanent Beam Limiting Devices. Permanent diaphragms or cones used for limiting the useful beam shall provide at least the same degree of attenuation as required for the tube housing assembly.

(3) Adjustable or Removable Beam Limiting Devices.

(a) Adjustable or removable beam limiting devices, diaphragms, cones or blocks shall not transmit more than five

percent of the useful beam for the most penetrating beam used;

(b) When adjustable beam limiting devices are used, the position and shape of the radiation field shall be indicated by a light beam.

(4) Filter System. The filter system shall be so designed that:

(a) Filters can not be accidentally displaced at every possible tube orientation;

(b) For equipment installed after the effective date of these rules, an interlock system prevents irradiation if the proper filter is not in place;

(c) The air kerma rate escaping from the filter slot shall not exceed 1 cGy (1 rad) per hour at one meter under operating conditions; and

(d) Filters shall be marked as to its material of construction and its thickness.

(5) Tube Immobilization.

(a) The x-ray tube shall be so mounted that it can not accidentally turn or slide with respect to the housing aperture; and

(b) The tube housing assembly shall be capable of being immobilized for stationary portal treatments.

(6) Source Marking. The tube housing assembly shall be so marked that it is possible to determine the location of the source to within five millimeters, and the marking shall be readily accessible for use during calibration procedures.

(7) Beam Block. Contact therapy tube housing assemblies shall have a removable shield of material, equivalent in attenuation to 0.5 millimeters of lead at 100 kV, which can be positioned over the entire useful beam exit port during periods when the beam is not in use.

(8) Timer. A suitable irradiation control device shall be provided to terminate the irradiation after a pre-set time interval.

(a) A timer which has a display shall be provided at the treatment control panel. The timer shall have a pre-set time selector. The timer shall activate with an indication of "BEAM-ON" and retain its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it shall be necessary to reset the timer;

(b) For equipment manufactured after the effective date of these rules, the timer shall be a cumulative timer with an elapsed time indicator. Otherwise, the timer may be a countdown timer;

(c) The timer shall terminate irradiation when a pre-selected time has elapsed, if the dose monitoring system present has not previously terminated irradiation;

(d) The timer shall permit pre-setting and determination of exposure times as short as one second;

(e) The timer shall not permit an exposure if set at zero;

(f) The timer shall not activate until the shutter is opened when irradiation is controlled by a shutter mechanism unless calibration includes a timer error correction to compensate for mechanical lag; and

(g) Timer shall be accurate to within one percent of the selected value or to within one second, whichever is greater.

(9) Control Panel Functions. The control panel, in addition to the displays required by other provisions in R313-30-6, shall have:

(a) An indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible;

(b) An indication of whether x-rays are being produced;

(c) Means for indicating x-ray tube potential and current;

(d) The means for terminating an exposure at any time;

(e) A locking device which will prevent unauthorized use of the therapeutic radiation machine; and

(f) For therapeutic radiation machines manufactured after the effective date of these rules, a positive display of specific filters in the beam.

(10) Multiple Tubes. When a control panel may energize more than one x-ray tube:

(a) It shall be possible to activate only one x-ray tube at a time;

(b) There shall be an indication at the control panel identifying which x-ray tube is activated; and

(c) There shall be an indication at the tube housing assembly when that tube is energized.

(11) Target-to-Skin Distance (TSD). There shall be a means of determining the central axis TSD to within one centimeter and of reproducing this measurement to within two millimeters thereafter.

(12) Shutters. Unless it is possible to bring the x-ray output to the prescribed exposure parameters within five seconds after the x-ray "ON" switch is energized, the beam shall be attenuated by a shutter having a lead equivalency not less than that of the tube housing assembly. In addition, after the unit is at operating parameters, the shutter shall be controlled electrically by the operator from the control panel. An indication of shutter position shall appear at the control panel.

(13) Low Filtration X-ray Tubes. Therapeutic radiation machines equipped with a beryllium or other low-filtration window shall have a label clearly marked on the tube housing assembly and shall be provided with a permanent warning device on the control panel that is activated when no additional filtration is present, to indicate that the dose rate is very high.

(14) Facility Design Requirements for Therapeutic Radiation Machines Capable of Operating in the Range 50 kV to 500 kV. In addition to shielding adequate to meet requirements of R313-30-9, the treatment room shall meet the following design requirements:

(a) Aural Communication. Provision shall be made for continuous two-way aural communication between the patient and the operator at the control panel;

(b) Viewing Systems. Provision shall be made to permit continuous observation of the patient during irradiation and the viewing system shall be so located that the operator can observe the patient from the control panel. The therapeutic radiation machine shall not be used for patient irradiation unless at least one viewing system is operational.

(15) Additional Requirements. Treatment rooms which contain a therapeutic radiation machine capable of operating above 150 kV shall meet the following additional requirements:

(a) Protective barriers shall be fixed except for entrance doors or beam interceptors;

(b) The control panel shall be located outside the treatment room or in a totally enclosed booth, which has a ceiling, inside the room;

(c) Interlocks shall be provided so that entrance doors, including doors to interior booths, shall be closed before treatment can be initiated or continued. If the radiation beam is interrupted by a door opening, it shall not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the control panel; and

(d) When a door referred to in R313-30-6(15)(c) is opened while the x-ray tube is activated, the irradiation shall be interrupted either electrically or by the closure of the shutter.

(16) Full Calibration Measurements.

(a) Full calibration of a therapeutic radiation machine subject to R313-30-6 shall be performed by, or under the direct supervision of, a Radiation Therapy Physicist:

(i) Before the first medical use following installation or reinstallation of the therapeutic radiation machine;

(ii) Annually. The intervals should not exceed 12 months and shall not exceed 13 months; and

(iii) Before medical use under the following conditions:

(A) Whenever quality assurance check measurements indicate that the radiation output differs by more than five percent from the value obtained at the last full calibration and

the difference cannot be reconciled; and

(B) Following a component replacement, major repair, or modification of components that could significantly affect the characteristics of the radiation beam.

(iv) Notwithstanding the requirements of R313-30-6(16)(a)(iii):

(A) Full calibration of therapeutic radiation machines with multi-energy capabilities is required only for those modes and energies that are not within their acceptable range; and

(B) If the repair, replacement or modification does not affect all energies, full calibration shall be performed on the affected energy that is in most frequent clinical use at the facility. The remaining energies may be validated with quality assurance check procedures against the criteria in R313-30-6(16)(a)(iii)(A).

(v) The registrant shall use the dosimetry system described in R313-30-8(6)(a) to perform the full calibration required in R313-30-6(16)(b);

(b) To satisfy the requirement of R313-30-6(16)(a), full calibration shall include measurements recommended for annual calibration by NCRP Report 69, "Dosimetry of X-Ray and Gamma Ray Beams for Radiation Therapy in the Energy Range 10 keV to 50 MeV," 1981 ed., which is adopted and incorporated by reference.

(c) The registrant shall maintain a record of calibrations for the duration of the registration. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number for both the therapeutic radiation machine and the x-ray tube, the model numbers and serial numbers of the instruments used to calibrate the therapeutic radiation machine, and the signature of the Radiation Therapy Physicist responsible for performing the calibration.

(17) Periodic Quality Assurance Checks.

(a) Periodic quality assurance checks shall be performed on therapeutic radiation machines subject to R313-30-6, which are capable of operation at greater than 50 kV.

(b) To satisfy the requirement of R313-30-6(17)(a), quality assurance checks shall meet the following requirements:

(i) The registrant shall perform quality assurance checks in accordance with written procedures established by the Radiation Therapy Physicist; and

(ii) The quality assurance check procedures shall specify the frequency at which tests or measurements are to be performed. The quality assurance check procedures shall specify that the quality assurance check shall be performed during the calibration specified in R313-30-6(16)(a). The acceptable tolerance for parameters measured in the quality assurance check, when compared to the value for that parameter determined in the calibration specified in R313-30-6(16)(a), shall be stated.

(c) The cause for a parameter exceeding a tolerance set by the Radiation Therapy Physicist shall be investigated and corrected before the system is used for patient irradiation;

(d) Whenever a quality assurance check indicates a significant change in the operating characteristics of a system, as specified in the Radiation Therapy Physicist's quality assurance check procedures, the system shall be recalibrated as required in R313-30-6(16)(a);

(e) The registrant shall use the dosimetry system described in R313-30-8(6)(b) to make the quality assurance check required in R313-30-6(17)(b);

(f) The registrant shall have the Radiation Therapy Physicist review and sign the results of radiation output quality assurance checks monthly. The interval should not exceed 30 days and shall not exceed 40 days;

(g) Therapeutic radiation machines subject to R313-30-6 shall have safety quality assurance checks of external beam radiation therapy facilities performed monthly. The interval should not exceed 30 days and shall not exceed 40 days;

(h) Notwithstanding the requirements of R313-30-6(17)(f) and R313-30-6(17)(g), the registrant shall ensure that no therapeutic radiation machine is used to administer radiation to humans unless the quality assurance checks required by R313-30-6(17)(f) and R313-30-6(17)(g) have been performed within the required interval immediately prior to the administration;

(i) To satisfy the requirement of R313-30-6(17)(g), safety quality assurance checks shall ensure proper operation of:

(i) Electrical interlocks at external beam radiation therapy room entrances;

(ii) Proper operation of the "BEAM-ON" and termination switches;

(iii) Beam condition indicator lights on the access doors, control console, and in the radiation therapy room;

(iv) Viewing systems;

(v) If applicable, electrically operated treatment room doors from inside and outside the treatment room;

(j) The registrant shall maintain a record of quality assurance checks required by R313-30-6(17)(a) and R313-30-6(17)(g) for three years. The record shall include the date of the quality assurance check, the manufacturer's name, model number, and serial number for the therapeutic radiation machine, the manufacturer's name, model number and serial number of the instruments used to measure the radiation output of the therapeutic radiation machine, and the signature of the individual who performed the periodic quality assurance check.

(18) Operating Procedures.

(a) The therapeutic radiation machine shall not be used for irradiation of patients unless the requirements of R313-30-6(16) and R313-30-6(17) have been met;

(b) Therapeutic radiation machines shall not be left unattended unless secured pursuant to R313-30-6(9)(e);

(c) When a patient must be held in position for radiation therapy, mechanical supporting or restraining devices shall be used;

(d) The tube housing assembly shall not be held by an individual during operation unless the assembly is designed to require holding and the peak tube potential of the system does not exceed 50 kV. In these cases, the holder shall wear protective gloves and apron of not less than 0.5 millimeters lead equivalency at 100 kV;

(e) A copy of the current operating and emergency procedures shall be maintained at the therapeutic radiation machine control console; and

(f) No individual other than the patient shall be in the treatment room during exposures from therapeutic radiation machines operating above 150 kV. At energies less than or equal to 150 kV, individuals, other than the patient, in the treatment room shall be protected by a barrier sufficient to meet the requirements of R313-15-201 of these rules.

R313-30-7. Therapeutic Radiation Machines - Photon Therapy Systems (500 kV and Above) and Electron Therapy Systems (500 keV and Above).

(1) Leakage Radiation Outside the Maximum Useful Beam in Photon and Electron Modes.

(a) The absorbed dose rate due to leakage radiation (excluding neutrons) at any point outside the maximum sized useful beam, but within a circular plane of radius two meters which is perpendicular to and centered on the central axis of the useful beam at the nominal treatment distance, that is at the plane of the patient, shall not exceed a maximum of 0.2 percent and an average of 0.1 percent of the absorbed dose rate on the central axis of the beam at the nominal treatment distance. Measurements shall be averaged over an area not exceeding 100 square centimeters at a minimum of 16 points uniformly distributed in the plane;

(b) Except for the area defined in R313-30-7(1)(a), the absorbed dose rate, excluding that from neutrons, at one meter

from the electron path between the electron source and the target or electron window shall not exceed 0.5 percent of the absorbed dose rate on the central axis of the beam at the nominal treatment distance. Measurements shall be averaged over an area not exceeding 100 square centimeters;

(c) For equipment manufactured after the effective date of these rules, the neutron absorbed dose outside the useful beam shall be in compliance with applicable acceptance criteria; and

(d) For therapeutic radiation machines, the registrant shall determine, or obtain from the manufacturer, the leakage radiation existing at the positions specified in R313-30-7(1)(a) through R313-30-7(1)(c) for the specified operating conditions. Records on leakage radiation measurements shall be maintained at the installation for inspection by representatives of the Director.

(2) Leakage Radiation Through Beam Limiting Devices.

(a) Photon Radiation.

(i) Adjustable or interchangeable beam limiting devices, such as the collimating jaws or x-ray cones, shall attenuate the useful beam so that at the nominal treatment distance, the maximum absorbed dose anywhere in the area shielded by the beam limiting devices shall not exceed two percent of the maximum absorbed dose on the central axis of the useful beam measured in a ten centimeters by ten centimeters radiation field; and

(ii) Interchangeable beam limiting devices, such as auxiliary beam blocking material, shall attenuate the useful beam so that at the nominal treatment distance, the maximum absorbed dose anywhere in the area shielded by the interchangeable beam limiting device shall not exceed five percent of the maximum absorbed dose on the central axis of the useful beam measured in a ten centimeter by ten centimeter radiation field.

(b) Electron Radiation. Adjustable or interchangeable electron applicators shall attenuate the radiation, including but not limited to photon radiation generated by electrons incident on the beam limiting device and electron applicator and other parts of the radiation head, so that the absorbed dose in a plane perpendicular to the central axis of the useful beam at the nominal treatment distance shall not exceed:

(i) A maximum of two percent of the absorbed dose on the central axis of the useful beam at the nominal treatment distance. This limit shall apply beyond a line seven centimeters outside the periphery of the useful beam; and

(ii) A maximum of ten percent of the absorbed dose on the central axis of the useful beam at the nominal treatment distance. This limit shall apply beyond a line two centimeters outside the periphery of the useful beam.

(c) Measurement of Leakage Radiation.

(i) Photon Radiation. Measurements of leakage radiation through the beam limiting devices shall be made with the beam limiting devices closed and residual apertures blocked by at least two tenth value layers of suitable absorbing material. In the case of overlapping beam limiting devices, the leakage radiation through the sets of beam limiting devices shall be measured independently at the depth of maximum dose. Measurements shall be made using a radiation detector of area not exceeding ten square centimeters;

(ii) Electron Radiation. Measurements of leakage radiation through the electron applicators shall be made with an appropriate radiation detector suitably protected against radiation which has been scattered from material beyond the radiation detector. Measurements shall be made using an appropriate amount of water equivalent build up material for the energies being measured.

(3) Filters and Wedges.

(a) Filters and wedges which are removable from the system shall be clearly marked with an identification number;

(i) For removable wedge filters, the nominal wedge angle shall appear on the wedge, or on the wedge tray if the wedge filter is permanently mounted to the tray.

(ii) If the wedge or wedge tray is damaged, the Radiation Therapy Physicist will decide if the wedge transmission factor shall be redetermined;

(b) For equipment manufactured after the effective date of these rules which utilize a system of wedge filters:

(i) Irradiation shall not be possible until a selection of a wedge filter or a positive selection to use "no wedge filter" has been made at the treatment control panel;

(ii) An interlock system shall be provided to prevent irradiation if the wedge filter selected is not in the correct position;

(iii) A display shall be provided at the treatment control panel showing the wedge filters in use; and

(iv) An interlock shall be provided to prevent irradiation if a wedge filter selection operation, either manual or automatic, carried out in the treatment room does not agree with the wedge filter selection operation carried out at the treatment control panel.

(c) If the absorbed dose rate information required by R313-30-7(8) relates exclusively to operation with a field flattening filter or beam scattering foil in place, the filter or foil shall be removable only by the use of tools. If removable, the filter or foil shall be interlocked to prevent incorrect selection and incorrect positioning.

(d) For equipment manufactured after the effective date of these rules which utilize a system of interchangeable field flattening filters or interchangeable beam scattering foils:

(i) An interlock system shall be provided to prevent irradiation if the appropriate flattening filter for the x-ray energy selected is not in the correct position in the beam;

(ii) An interlock system shall be provided to prevent irradiation if the appropriate beam scattering foil for the electron energy selected is not in the correct position in the beam;

(iii) An interlock system shall be provided to prevent irradiation if no scattering foil is in place for the electron beams, or if no flattening filter is in place for the x-ray beams; and

(iv) A display shall be provided at the treatment control panel showing a fault indicator when the interlock system has prevented irradiation. The fault indicator will identify a filter or foil error.

(4) Stray Radiation in the Useful Beam. For equipment manufactured after the effective date of these rules, the registrant shall determine during acceptance testing, or obtain from the manufacturer, data sufficient to ensure that x-ray stray radiation in the useful electron beam, absorbed dose at the surface during x-ray irradiation and stray neutron radiation in the useful x-ray beam meet applicable acceptance criteria.

(5) Beam Monitors. Therapeutic radiation machines subject to R313-30-7 shall be provided with redundant beam monitoring systems. The sensors for these systems shall be fixed in the useful beam during treatment to indicate the dose monitor unit rate, and to monitor other beam parameters.

(a) Equipment manufactured after the effective date of these rules shall be provided with at least two independently powered integrating dose meters. Alternatively, common elements may be used if the production of radiation is terminated upon failure of a common element.

(b) Equipment manufactured on or before the effective date of these rules shall be provided with at least one radiation detector. This detector shall be incorporated into a useful beam monitoring system;

(c) The detector and the system into which that detector is incorporated shall meet the following requirements:

(i) Detectors shall be removable only with tools and, if movable, shall be interlocked to prevent incorrect positioning;

(ii) Detectors shall form part of a beam monitoring system from whose readings in dose monitor units the absorbed dose at

a reference point can be calculated;

(iii) The beam monitoring systems shall be capable of independently monitoring, interrupting, and terminating irradiation; and

(iv) For equipment manufactured after the effective date of these rules, the design of the beam monitoring systems shall ensure that the:

(A) Malfunctioning of one system shall not affect the correct functioning of the secondary system; and

(B) Failure of an element common to both systems which could affect the correct function of both systems shall terminate irradiation or prevent the initiation of radiation.

(v) Beam monitoring systems shall have a legible display at the treatment control panel. For equipment manufactured after the effective date of these rules, displays shall:

(A) Maintain a reading until intentionally reset;

(B) Have only one scale and no electrical or mechanical scale multiplying factors;

(C) Utilize a design so that increasing dose monitor units are displayed by increasing numbers; and

(D) In the event of power failure, the dose monitor units delivered up to the time of failure, or the beam monitoring information required in R313-30-7(5)(c)(v)(C) displayed at the control panel at the time of failure shall be retrievable in at least one system for a 20 minute period of time.

(6) Beam Symmetry.

(a) Bent-beam linear accelerators subject to R313-30-7 shall be provided with auxiliary devices to monitor beam symmetry;

(b) The devices referenced in R313-30-7(6)(a) shall be able to detect field asymmetry greater than ten percent; and

(c) The devices referenced in R313-30-7(6)(a) shall be configured to terminate irradiation if the specifications in R313-30-7(6)(b) can not be maintained.

(7) Selection and Display of Dose Monitor Units.

(a) Irradiation shall not be possible until a selection of a number of dose monitor units has been made at the treatment control panel;

(b) The preselected number of dose monitor units shall be displayed at the treatment control panel until reset manually for the next irradiation;

(c) After termination of irradiation, it shall be necessary to reset the dosimeter display before subsequent treatment can be initiated; and

(d) For equipment manufactured after the effective date of these rules, after termination of irradiation, it shall be necessary for the operator to reset the preselected dose monitor units before irradiation can be initiated.

(8) Air Kerma Rate and Absorbed Dose Rate. For equipment manufactured after the effective date of these rules, a system shall be provided from whose readings the air kerma rate or absorbed dose rate at a reference point can be calculated. The radiation detectors specified in R313-30-7(5) may form part of this system. In addition:

(a) The dose monitor unit dose rate shall be displayed at the treatment control panel;

(b) If the equipment can deliver an air kerma rate or absorbed dose rate at the nominal treatment distance more than twice the maximum value specified by the manufacturer, a device shall be provided which terminates irradiation when the air kerma rate or absorbed dose rate exceeds a value twice the specified maximum. The dose rate at which the irradiation will be terminated shall be a record maintained by the registrant;

(c) If the equipment can deliver, under any fault condition, an air kerma rate or absorbed dose rate at the nominal treatment distance more than ten times the maximum value specified by the manufacturer, a device shall be provided to prevent the air kerma rate or absorbed dose rate anywhere in the radiation field from exceeding twice the specified maximum value and to terminate irradiation if the excess absorbed dose at the nominal treatment distance exceeds 4 Gy (400 rad); and

(d) For therapeutic radiation machines, the registrant shall determine, or obtain from the manufacturer, the maximum values specified in R313-30-7(8)(b) and R313-30-7(8)(c) for the specified operating conditions. Records of these maximum values shall be maintained at the installation for inspection by representatives of the Director.

(9) Termination of Irradiation by the Beam Monitoring System or Systems During Stationary Beam Radiation Therapy.

(a) Primary systems shall terminate irradiation when the preselected number of dose monitor units has been detected by the system;

(b) If the original design of the equipment included a secondary dose monitoring system, that system shall be capable of terminating irradiation when not more than 15 percent or 40 dose monitor units above the preselected number of dose monitor units set at the control panel has been detected by the secondary dose monitoring system; and

(c) For equipment manufactured after the effective date of these rules, an indicator on the control panel shall show which monitoring system has terminated irradiation.

(10) Termination Switches. It shall be possible to terminate irradiation and equipment movement or go from an interruption condition to termination condition at any time from the operator's position at the treatment control panel.

(11) Interruption Switches. If a therapeutic radiation machine has an interrupt mode, it shall be possible to interrupt irradiation and equipment movements at any time from the treatment control panel. Following an interruption, it shall be possible to restart irradiation by operator action without a reselection of operating conditions. If a change is made of a pre-selected value during an interruption, irradiation and equipment movements shall be automatically terminated.

(12) Timer. A suitable irradiation control device shall be provided to terminate the irradiation after a preset time interval.

(a) A timer shall be provided which has a display at the treatment control panel. The timer shall have a preset time selector and an elapsed time indicator;

(b) The timer shall be a cumulative timer which activates with an indication of "BEAM-ON" and retains its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it shall be necessary to reset the elapsed time indicator;

(c) The timer shall terminate irradiation when a preselected time has elapsed, if the dose monitoring systems have not previously terminated irradiation.

(13) Selection of Radiation Type. Equipment capable of both x-ray therapy and electron therapy shall meet the following additional requirements:

(a) Irradiation shall not be possible until a selection of radiation type (x-rays or electrons) has been made at the treatment control panel;

(b) The radiation type selected shall be displayed at the treatment control panel before and during irradiation;

(c) An interlock system shall be provided to ensure that the equipment can principally emit only the radiation type which has been selected;

(d) An interlock system shall be provided to prevent irradiation with x-rays, except to obtain a verification film, when electron applicators are fitted;

(e) An interlock system shall be provided to prevent irradiation with electrons when accessories specific for x-ray therapy are fitted; and

(f) An interlock system shall be provided to prevent irradiation if selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment control panel.

(14) Selection of Energy. Equipment capable of

generating radiation beams of different energies shall meet the following requirements:

(a) Irradiation shall not be possible until a selection of energy has been made at the treatment control panel;

(b) The nominal energy value selected shall be displayed at the treatment control panel before and during irradiation; and

(c) Irradiation shall not be possible until the appropriate flattening filter or scattering foil for the selected energy is in its proper location.

(15) Selection of Stationary Beam Radiation Therapy or Moving Beam Radiation Therapy. Therapeutic radiation machines capable of both stationary beam radiation therapy and moving beam radiation therapy shall meet the following requirements:

(a) Irradiation shall not be possible until a selection of stationary beam radiation therapy or moving beam radiation therapy has been made at the treatment control panel;

(b) The mode of operation shall be displayed at the treatment control panel;

(c) An interlock system shall be provided to ensure that the equipment can operate only in the mode which has been selected;

(d) An interlock system shall be provided to prevent irradiation if a selected parameter in the treatment room does not agree with the selected parameter at the treatment control panel;

(e) Moving beam radiation therapy shall be controlled to obtain the selected relationships between incremental dose monitor units and incremental angle of movement. For equipment manufactured after the effective date of these rules:

(i) An interlock system shall be provided to terminate irradiation if the number of dose monitor units delivered in increments of ten degrees of rotation or one centimeter of motion differs by more than 20 percent from the selected value;

(ii) Where angle terminates the irradiation in moving beam radiation therapy, the dose monitor units shall differ by less than five percent from the dose monitor unit value selected;

(iii) An interlock shall be provided to prevent motion of more than five degrees or one centimeter beyond the selected limits during moving beam radiation therapy;

(iv) For equipment manufactured after the effective date of these rules, an interlock shall be provided to require that a selection of direction be made at the treatment control panel in units which are capable of both clockwise and counter-clockwise moving beam radiation therapy.

(v) Moving beam radiation therapy shall be controlled with both primary position sensors and secondary position sensors to obtain the selected relationships between incremental dose monitor units and incremental movement.

(f) Where the beam monitor system terminates the irradiation in moving beam radiation therapy, the termination of irradiation shall be as required by R313-30-7(9); and

(g) For equipment manufactured after the effective date of these rules, an interlock system shall be provided to terminate irradiation if movement:

(i) Occurs during stationary beam radiation therapy; or

(ii) Does not start or stops during moving beam radiation therapy unless the stoppage is a preplanned function.

(16) Facility Design Requirements for Therapeutic Radiation Machines Operating above 500 kV. In addition to shielding adequate to meet requirements of R313-30-9, the following design requirements are made:

(a) Protective Barriers. Protective barriers shall be fixed, except for access doors to the treatment room or movable beam interceptors;

(b) Control Panel. In addition to other requirements specified in R313-30, the control panel shall also:

(i) Be located outside the treatment room;

(ii) Provide an indication of whether electrical power is available at the control panel and if activation of the radiation is possible;

(iii) Provide an indication of whether radiation is being produced; and

(iv) Include an access control device which will prevent unauthorized use of the therapeutic radiation machine;

(c) Viewing Systems. Windows, mirrors, closed-circuit television or an equivalent viewing system shall be provided to permit continuous observation of the patient following positioning and during irradiation and shall be so located that the operator may observe the patient from the treatment control panel. The therapeutic radiation machine shall not be used for patient irradiation unless at least one viewing system is operational;

(d) Aural Communications. Provision shall be made for continuous two-way aural communication between the patient and the operator at the control panel. The therapeutic radiation machine shall not be used for irradiation of patients unless continuous two-way aural communication is possible;

(e) Room Entrances. Treatment room entrances shall be provided with warning lights in a readily observable position near the outside of access doors, which will indicate when the useful beam is "ON;"

(f) Entrance Interlocks. Interlocks shall be provided so that access controls are activated before treatment can be initiated or continued. If the radiation beam is interrupted by an access control, it shall not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the control panel;

(g) Beam Interceptor Interlocks. If the shielding material in a protective barrier requires the presence of a beam interceptor to ensure compliance with R313-30-301(1), interlocks shall be provided to prevent the production of radiation, unless the beam interceptor is in place, whenever the useful beam is directed at the designated barriers;

(h) Emergency Cutoff Switches. At least one emergency power cutoff switch shall be located in the radiation therapy room and shall terminate equipment electrical power including radiation and mechanical motion. This switch is in addition to the termination switch required by R313-30-7(11). Emergency power cutoff switches shall include a manual reset so that the therapeutic radiation machine cannot be restarted from the unit's control panel without resetting the emergency cutoff switch. Alternatively, power cannot be restarted without pressing a RESET button in the treatment room after resetting the power breaker, and the operator shall check the treatment room and patient prior to turning the power back on;

(i) Safety Interlocks. Safety interlocks shall be designed so that defects or component failures in the safety interlock system prevent or terminate operation of the therapeutic radiation machine; and

(j) Surveys for Residual Radiation. Surveys for residual activity shall be conducted on therapeutic radiation machines capable of generating photon and electron energies above 10 MV prior to machining, removing, or working on therapeutic radiation machine components which may have become activated due to photo-neutron production.

(17) Radiation Therapy Physicist Support.

(a) The services of a Radiation Therapy Physicist shall be required in facilities having therapeutic radiation machines with energies of 500 kV and above. The Radiation Therapy Physicist shall be responsible for:

(i) Full calibrations required by R313-30-7(19) and protection surveys required by R313-30-4(1);

(ii) Supervision and review of dosimetry;

(iii) Beam data acquisition and transfer for computerized dosimetry, and supervision of its use;

(iv) Quality assurance, including quality assurance check review required by R313-30-7(20)(e) of these rules;

(v) Consultation with the authorized user in treatment

planning, as needed; and

(vi) Perform calculations and assessments regarding misadministrations.

(b) If the Radiation Therapy Physicist is not a full-time employee of the registrant, the operating procedures required by R313-30-7(18) shall also specifically address how the Radiation Therapy Physicist is to be contacted for problems or emergencies, as well as the specific actions to be taken until the Radiation Therapy Physicist can be contacted.

(18) Operating Procedures.

(a) No individual, other than the patient, shall be in the treatment room during treatment or during an irradiation for testing or calibration purposes;

(b) Therapeutic radiation machines shall not be made available for medical use unless the requirements of R313-30-4(1), R313-30-7(19) and R313-30-7(20) have been met;

(c) Therapeutic radiation machines, when not in operation, shall be secured to prevent unauthorized use;

(d) If a patient must be held in position during treatment, mechanical supporting or restraining devices shall be used;

(e) A copy of the current operating and emergency procedures shall be maintained at the therapeutic radiation machine control console; and

(f) When adjustable beam limiting devices or beam limiting devices that do not contact the skin are used, the position and shape of the radiation field shall be indicated by a light field.

(19) Full Calibration Measurements.

(a) Full calibration of a therapeutic radiation machine subject to R313-30-7 shall be performed by, or under the direct supervision of, a Radiation Therapy Physicist:

(i) Before the first medical use following installation or reinstallation of the therapeutic radiation machine;

(ii) Annually. The intervals should not exceed 12 months and shall not exceed 13 months; and

(iii) Before medical use under the following conditions:

(A) Whenever quality assurance check measurements indicate that the radiation output differs by more than five percent from the value obtained at the last full calibration and the difference cannot be easily reconciled; and

(B) Following component replacement, major repair, or modification of components, if the appropriate Quality Assurance checks demonstrate that the characteristics of the radiation beam have been significantly affected as determined by a Radiation Therapy Physicist. The Quality Assurance checks shall be performed by, or under the direct supervision of a Radiation Therapy Physicist. The determination of the need for a full calibration shall be made by a Radiation Therapy Physicist.

(iv) Notwithstanding the requirements of R313-30-7(19)(a)(iii):

(A) Full calibration of therapeutic radiation machines with multi-energy and multi-mode capabilities is required only for those modes and energies that are not within their range and the difference cannot be easily reconciled; and

(B) If the repair, replacement or modification does not affect all modes and energies, full calibration shall be performed on the effected mode or energy if the Quality Assurance checks demonstrate that the characteristics of the radiation beam have been significantly affected as determined by a Radiation Therapy Physicist. The Quality Assurance checks shall be performed by, or under the direct supervision of, a Radiation Therapy Physicist. The determination of the need for a full calibration shall be made by a Radiation Therapy Physicist. The remaining energies or modes may be validated with quality assurance check procedures against the criteria in R313-30-7(19)(a)(iii)(A).

(b) To satisfy the requirement of R313-30-7(19)(a), full calibration shall include measurements required for annual calibration by American Association of Physicists in Medicine (AAPM) Report 46, "Comprehensive Quality Assurance for Radiation Oncology," 1994 ed., which is adopted and incorporated by reference;

(c) The registrant shall use the dosimetry system described in R313-30-8(6) to measure the radiation output for one set of exposure conditions. The remaining radiation measurements required in R313-30-7(19)(b) may then be made using a dosimetry system that indicates relative dose rates; and

(d) The registrant shall maintain a record of calibrations for the duration of the registration. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number for the therapeutic radiation machine, the model numbers and serial numbers of the instruments used to calibrate the therapeutic radiation machine, and the signature of the Radiation Therapy Physicist responsible for performing the calibration.

(20) Periodic Quality Assurance Checks.

(a) Periodic quality assurance checks shall be performed on therapeutic radiation machines subject to R313-30-7. These checks should be performed at intervals not to exceed those intervals recommended in American Association of Physicists in Medicine (AAPM) Report 46, "Comprehensive Quality Assurance for Radiation Oncology," 1994 ed., which is adopted and incorporated by reference.

(i) Determination of parameters for central axis radiation output shall be done at least weekly. The interval shall not exceed ten days.

(ii) The interval at which periodic quality assurance checks are to be performed shall be determined by the Radiation Therapy Physicist and shall be documented in the registrant's quality management program. The interval for a specific performance check may be based on the history of that performance check for a particular machine. The interval may be increased above the recommended limits only if the Radiation Therapy Physicist determines the increase is justified based on the history of the performance check for that machine or a machine of the same manufacturer and the same model.

(iii) If the performance check demonstrates a need to decrease the interval, the Radiation Therapy Physicist shall decide if the interval should be decreased. The decreased interval shall be continued until the performance check demonstrates that the decreased interval is not necessary.

(b) To satisfy the requirement of R313-30-7(20)(a), quality assurance checks shall include determination of central axis radiation output and shall include a representative sampling of periodic quality assurance checks contained in American Association of Physicists in Medicine (AAPM) Report 46, "Comprehensive Quality Assurance for Radiation Oncology," 1994 ed., which is adopted and incorporated by reference.

(i) A representative sampling shall include those referenced periodic quality assurance checks necessary to assure that the radiation beam and alignment parameters for all therapy machines and modes of operation are within limits prescribed by AAPM Report 46.

(ii) The intervals for a representative sampling of referenced periodic quality assurance checks should not exceed 12 consecutive months and shall not exceed 13 consecutive months.

(c) The registrant shall use a dosimetry system which has been inter-compared semi-annually. The intervals should not exceed six months and shall not exceed seven months, with a dosimetry system described in R313-30-8(6)(a) to make the periodic quality assurance checks required in R313-30-7(20)(a)(i);

(d) The registrant shall perform periodic quality assurance checks required by R313-30-7(20)(a) in accordance with procedures established by the Radiation Therapy Physicist;

(e) The registrant shall review the results of periodic

radiation output checks according to the following procedures:

(i) The authorized user and Radiation Therapy Physicist shall be immediately notified if a parameter is not within its acceptable range. The therapeutic radiation machine shall not be made available for subsequent medical use until the Radiation Therapy Physicist has determined that all parameters are within their acceptable range;

(ii) If periodic radiation output check parameters appear to be within their acceptable range, the periodic radiation output check shall be reviewed and signed by either the authorized user or Radiation Therapy Physicist within two weeks;

(iii) The Radiation Therapy Physicist shall review and sign the results of radiation output quality assurance checks at intervals not to exceed one month; and

(iv) Other Quality Assurance checks shall be reviewed at intervals specified in the Quality Management Program, as required by R313-30-5.

(f) Therapeutic radiation machines subject to R313-30-7 shall have safety quality assurance checks of external beam radiation therapy facilities performed weekly at intervals not to exceed ten days;

(g) To satisfy the requirement of R313-30-7(20)(f), safety quality assurance checks shall ensure proper operation of:

(i) Electrical interlocks at external beam radiation therapy room entrances;

(ii) Proper operation of the "BEAM-ON", interrupt and termination switches;

(iii) Beam condition indicator lights on the access doors, control console, and in the radiation therapy room;

(iv) Viewing and aural communication systems;

(v) Electrically operated treatment room doors from inside and outside the treatment room;

(vi) At least one emergency power cutoff switch. If more than one emergency power cutoff switch is installed and not all switches are tested at once, switches shall be tested on a rotating basis. Safety quality assurance checks of the emergency power cutoff switches may be conducted at the end of the treatment day in order to minimize possible stability problems with the therapeutic radiation machine.

(h) The registrant shall promptly repair a system identified in R313-30-7(20)(g) that is not operating properly; and

(i) The registrant shall maintain a record of quality assurance checks required by R313-30-7(20)(a) and R313-30-7(20)(g) for three years. The record shall include the date of the quality assurance check, the manufacturer's name, model number, and serial number for the therapeutic radiation machine, the manufacturer's name, model number and serial number of the instruments used to measure the radiation output of the therapeutic radiation machine, and the signature of the individual who performed the periodic quality assurance check.

R313-30-8. Calibration and Check of Survey Instruments and Dosimetry Equipment.

(1) The registrant shall ensure that the survey instruments used to show compliance with R313-30 have been calibrated before first use, at intervals not to exceed 12 months, and following repair.

(2) To satisfy the requirements of R313-30-8(1), the registrant shall:

(a) Calibrate required scale readings up to 10 mSv (1000 mrem) per hour with an appropriate radiation source that is traceable to the National Institute of Standards and Technology (NIST);

(b) Calibrate at least two points on the scales to be calibrated. These points should be at approximately 1/3 and 2/3 of scale rating; and

(3) To satisfy the requirements of R313-30-8(2), the registrant shall:

(a) Consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than ten percent; and

(b) Consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than 20 percent if a correction factor or graph is conspicuously attached to the instrument.

(4) The registrant shall retain a record of calibrations required in R313-30-8(1) for three years. The record shall include:

(a) A description of the calibration procedure; and

(b) A description of the source used and the certified dose rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, the signature of the individual who performed the calibration, and the date of calibration.

(5) The registrant may obtain the services of individuals licensed by the Director, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State to perform calibrations of survey instruments. Records of calibrations which contain information required by R313-30-8(4) shall be maintained by the registrant.

(6) Dosimetry Equipment.

(a) The registrant shall have a calibrated dosimetry system available for use. The system shall have been calibrated for by the National Institute for Standards and Technology (NIST) or by an American Association of Physicists in Medicine (AAPM) Accredited Dosimetry Calibration Laboratory (ADCL). The calibration shall have been performed within 24 months prior to use and after servicing that may have affected system calibration.

(i) For beams with energies greater than 1 MV (1 MeV), the dosimetry system shall have been calibrated for Cobalt-60;

(ii) For beams with energies equal to or less than 1 MV (1 MeV), the dosimetry system shall have been calibrated at an energy or energy range appropriate for the radiation being used.

(b) The registrant shall have available for use a dosimetry system for quality assurance check measurements. To meet this requirement, the system may be compared with a system that has been calibrated in accordance with R313-30-8(6)(a). This comparison shall have been performed within the previous 12 months (six months if the dosimetry system is an ionization chamber) and after servicing that may have affected system calibration. The quality assurance check system may be the same system used to meet the requirement in R313-30-8(6)(a);

(c) The registrant shall maintain a record of dosimetry system calibration, intercomparison, and comparison for the duration of the license and registration. For calibrations, intercomparisons, or comparisons, the record shall include the date, the model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by R313-30-8(6)(a) and R313-30-8(6)(b), the correction factors that were determined, the names of the individuals who performed the calibration, intercomparison, or comparison, and evidence that the calibration, intercomparison, or comparison was performed by, or under the direct supervision of, a Radiation Therapy Physicist.

R313-30-9. Shielding and Safety Design Requirements.

(1) Therapeutic radiation machines subject to R313-30-6 or R313-30-7 shall be provided with the primary and secondary barriers that are necessary to ensure compliance with R313-15-201 and R313-30-301 of these rules.

(2) Facility design information for new installations of a therapeutic radiation machine or installations of a therapeutic radiation machine of higher energy into a room not previously approved for that energy shall be submitted for approval by the Director prior to actual installation of the therapeutic radiation machine. The minimum facility design information that must be submitted is contained in R313-30-10.

R313-30-10. Information on Radiation Shielding Required for Plan Reviews.

(1) Therapeutic Radiation Machines

(a) Basic facility information including: name, telephone number and registration number of the individual responsible for preparation of the shielding plan; name and telephone number of the facility supervisor; and the street address, including room number, of the external beam radiation therapy facility. The plan should also indicate whether this is a new structure or a modification to existing structures.

(b) Wall, floor, and ceiling areas struck by the useful beam shall have primary barriers. For an adjacent area that is normally unoccupied, barrier thicknesses may be less than the required thickness, if:

(i) That area where the exposure rates and exposures exceed the limits specified in R313-15-301(1) is permanently fenced or walled to prevent access;

(ii) The appropriate warning signs are posted at appropriate intervals and locations on the fence or wall;

(iii) The exposure rates and exposures outside the fence or wall are less than the limits specified in R313-15-301(1);

(iv) Access to the area is controlled by the operator, and once access is gained, the therapeutic radiation machine cannot be operated until the area has been cleared and access is again controlled by the operator;

(v) The ceiling is of sufficient thickness to reduce exposure due to skyshine, so that the exposure rates and exposures surrounding the facility are less than the limits specified in R313-15-301(1); and

(vi) The primary barrier is of sufficient thickness to ensure that the exposure rates and exposures from the primary beam in spaces in adjacent buildings are less than the limits specified in R313-15-301(1).

(c) Secondary barriers shall be provided in wall, floor, and ceiling areas not having primary barriers.

(2) Therapeutic Radiation Machines up to 150 kV (photons only). In addition to the requirements listed in R313-30-10(1), therapeutic radiation machine facilities which produce only photons with a maximum energy less than or equal to 150 kV shall submit shielding plans which contain, as a minimum, the following additional information:

(a) Equipment specifications, including the manufacturer and model number of the therapeutic radiation machine, as well as the maximum technique factors.

(b) Maximum design workload for the facility including total weekly radiation output, expressed in gray (rad) or air kerma at one meter, total beam-on time per day or week, the average treatment time per patient, along with the anticipated number of patients to be treated per day or week.

(c) A facility blueprint or drawing indicating: the scale of the blueprint or drawing; direction of North; normal location of the therapeutic radiation machine's radiation ports; the port's travel and traverse limits; general directions of the useful beam; locations of windows and doors; and the location of the therapeutic radiation machine control panel. If the control panel is located inside the external beam radiation therapy treatment room, the location of the operator's booth shall be noted on the plan and the operator's station at the control panel shall be behind a protective barrier sufficient to ensure compliance with R313-15-101 of these rules.

(d) The structural composition and thickness or the lead or concrete equivalent of walls, doors, partitions, floor, and ceiling of the rooms concerned.

(e) The type of occupancy of adjacent areas inclusive of space above and below the rooms concerned. If there is an exterior wall, show distance to the closest areas where it is likely that individuals may be present.

(f) At least one example calculation which shows the methodology used to determine the amount of shielding required for the physical conditions; that is the primary and secondary or leakage barriers, restricted and unrestricted areas, entry doors; and shielding material in the facility.

(i) If commercial software is used to generate shielding requirements, please also identify the software used and the version or revision date.

(ii) If the software used to generate shielding requirements is not in the open literature, please also submit quality control sample calculations to verify the result obtained with the software.

(3) Therapeutic Radiation Machines over 150 kV. In addition to the requirements listed in R313-30-10(1), therapeutic radiation machine facilities which produce photons with a maximum energy in excess of 150 kV and electrons and protons or other subatomic particles shall submit shielding plans which contain, as a minimum, the following additional information:

(a) Equipment specifications including the manufacturer and model number of the therapeutic radiation machine, and gray (rad) at the isocenter and the energies and types of radiation produced, that is photon and electron. The source to isocenter distance shall be specified.

(b) Maximum design workload for the facility including total weekly radiation output, expressed in gray (rad) at one meter, total beam-on time per day or week, the average treatment time per patient, along with the anticipated number of patients to be treated per day or week.

(c) Facility blueprint or drawing, including both floor plan and elevation views, indicating relative orientation of the therapeutic radiation machine; scale; types; thickness and minimum density of shielding materials; direction of North; the locations and size of penetrations through shielding barriers, ceiling, walls and floor; as well as details of the doors and maze.

(d) The structural composition and thickness or concrete equivalent of walls, doors, partitions, floor, and ceiling of the rooms concerned.

(e) The type of occupancy of adjacent areas inclusive of space above and below the rooms concerned. If there is an exterior wall, show distance to the closest areas where it is likely that individuals may be present.

(f) Description of assumptions that were used in shielding calculations including, but not limited to; design energy, for example a room may be designed for 6 MV unit although only a 4 MV unit is currently proposed; workload; presence of integral beam-stop in unit; occupancy and uses of adjacent areas; fraction of time that useful beam will intercept permanent barriers, walls, floor and ceiling; and "allowed" radiation exposure in both restricted and unrestricted areas.

(g) At least one example calculation which shows the methodology used to determine the amount of shielding required for the physical conditions; that is the primary and secondary or leakage barriers, restricted and unrestricted areas, small angle scatter, entry doors and maze; and shielding material in the facility.

(i) If commercial software is used to generate shielding requirements, also identify the software used and the version or revision date.

(ii) If the software used to generate shielding requirements is not in the open literature, also submit quality control sample calculations to verify the result obtained with the software.

(4) Neutron Shielding. In addition to the requirements listed in R313-30-10(3), therapeutic radiation machine facilities which are capable of operating above 10 MV shall submit shielding plans which contain, as a minimum, the following additional information:

(a) The structural composition, thickness, minimum density and location of neutron shielding material.

(b) Description of assumptions that were used in neutron shielding calculations including, but not limited to, neutron

spectra as a function of energy, neutron flux rate, absorbed dose and dose equivalent, due to neutrons, in both restricted and unrestricted areas.

(c) At least one example calculation which shows the methodology used to determine the amount of neutron shielding required for the physical conditions, that is, restricted and unrestricted areas, entry doors and maze and neutron shielding material utilized in the facility.

(i) If commercial software is used to generate shielding requirements, also identify the software used and the version or revision date.

(ii) If the software used to generate shielding requirements is not in the open literature, also submit quality control sample calculations to verify the result obtained with the software.

(d) The methods and instrumentation which will be used to verify the adequacy of neutron shielding installed in the facility.

KEY: x-rays, survey, radiation, radiation safety
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R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-34. Requirements for Irradiators.
R313-34-1. Purpose and Authority.

(1) Rule R313-34 prescribes requirements for the issuance of licenses authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

(3) The requirements of Rule R313-34 are in addition to, and not in substitution for, the other requirements of these rules.

R313-34-2. Scope.

(1) Rule R313-34 shall apply to panoramic irradiators that have either dry or wet storage of the radioactive sealed sources; underwater irradiators in which both the source and the product being irradiated are under water; and irradiators whose dose rates exceed 5 grays (500 rads) per hour at 1 meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type.

(2) The requirements of Rule R313-34 shall not apply to self-contained dry-source-storage irradiators in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel, medical radiology or teletherapy, the irradiation of materials for nondestructive testing purposes, gauging, or open-field agricultural irradiations.

R313-34-3. Clarifications or Exemptions.

For purposes of Rule R313-34, 10 CFR 36, 2014 ed., is incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following 10 CFR sections: 36.1, 36.5, 36.8, 36.11, 36.17, 36.19(a), 36.91, and 36.93;

(2) The substitution of the following:

(a) Radiation Control Act for Atomic Energy Act of 1954;

(b) Utah Radiation Control Rules for the reference to NRC regulations and the Commission's regulations;

(c) The Director or the Executive Secretary's for the Commission or the Commission's, and NRC in the following 10 CFR sections: 36.13, 36.13(f), 36.15, 36.19(b), 36.53(c), 36.69, and 36.81(a), 36.81(d) and 36.81(e); and

(d) In 10 CFR 36.51(a)(1), Rule R313-15 for NRC;

(3) Appendix B of 10 CFR Part 20 refers to the 2014 ed. of 10 CFR; and

(4) The substitution of Title R313 references for the following 10 CFR references:

(a) Section R313-12-51 for reference to 10 CFR 30.51;

(b) Rule R313-15 for the reference to 10 CFR 20;

(c) Subsection R313-15-501(3) for the reference to 10 CFR 20.1501(c);

(d) Section R313-15-902 for the reference to 10 CFR 20.1902;

(e) Rule R313-18 for the reference to 10 CFR 19;

(f) Section R313-19-41 for the reference to 10 CFR 30.41;

(g) Section R313-19-50 for the reference to 10 CFR 30.50;

(h) Section R313-22-33 for the reference to 10 CFR 30.33;

(i) Section R313-22-210 for the reference to 10 CFR 32.210;

(j) Section R313-22-35 for the reference to 10 CFR 30.35; and

(k) Rule R313-70 for the reference to 10 CFR 170.31.

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R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-35. Requirements for X-Ray Equipment Used for Non-Medical Applications.
R313-35-1. Purpose and Scope.

(1) R313-35 establishes radiation safety requirements for registrants who use electronic sources of radiation for industrial radiographic applications, analytical applications or other non-medical applications. Registrants engaged in the production of radioactive material are also subject to the requirements of R313-19 and R313-22. The requirements of R313-35 are an addition to, and not a substitution for, the requirements of R313-15, R313-16, R313-18 and R313-70.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6).

R313-35-2. Definitions.

As used in R313-35:

"Analytical x-ray system" means a group of components utilizing x-rays to determine the elemental composition or to examine the microstructure of materials by either x-ray fluorescence or diffraction analysis.

"Cabinet x-ray system" means an x-ray system with the x-ray tube installed in an enclosure, hereinafter termed "cabinet," which, independent of existing architectural structure except the floor on which it may be placed, is intended to contain at least that portion of a material being irradiated, provide radiation attenuation, and exclude personnel from its interior during generation of x-radiation. Included are all x-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad and bus terminals, and similar facilities. An x-ray tube used within a shielded part of a building, or x-ray equipment which may temporarily or occasionally incorporate portable shielding is not considered a cabinet x-ray system.

"Collimator" means a device used to limit the size, shape and direction of the primary radiation beam.

"Direct reading dosimeter" means an ion-chamber pocket dosimeter or an electronic personal dosimeter.

"External surface" means the outside surfaces of cabinet x-ray systems, including the high-voltage generator, doors, access panels, latches, control knobs, and other permanently mounted hardware and including the plane across an aperture or port.

"Fail-safe characteristics" means design features which cause beam port shutters to close, or otherwise prevent emergence of the primary beam, upon the failure of a safety or warning device.

"Forensics x-ray" means the use of x-ray systems in forensic autopsies of deceased humans, police agency use of x-ray systems for evidence identification and testing, or x-ray system use for arson or questionable origin fire investigations.

"Nondestructive testing" means the examination of the macroscopic structure of materials by nondestructive methods utilizing x-ray sources of radiation.

"Non-medical applications" means uses of x-ray systems except those used for providing diagnostic information or therapy on human patients.

"Normal operating procedures" means instructions necessary to accomplish the x-ray procedure being performed. These procedures shall include positioning of the equipment and the object being examined, equipment alignment, routine maintenance by the registrant, and data recording procedures which are related to radiation safety.

"Open-beam configuration" means a mode of operation of an analytical x-ray system in which individuals could accidentally place some part of the body into the primary beam during normal operation if no further safety devices are incorporated.

"Portable package inspection system" means a portable x-ray system designed and used for determining the presence of explosives in a package.

"Primary beam" means ionizing radiation which passes through an aperture of the source housing via a direct path from the x-ray tube located in the radiation source housing.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels could result in individuals receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.

"X-ray system" means an assemblage of components for the controlled production of x-rays. It includes, minimally, an x-ray high-voltage generator, an x-ray control, a tube housing assembly, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

R313-35-20. Personnel Monitoring.

Registrants using x-ray systems in non-medical applications shall meet the requirements of R313-15-502.

R313-35-30. Locking of X-ray Systems Other Than Veterinary X-Ray Systems.

The control panel of x-ray systems located in uncontrolled areas shall be equipped with a locking device that will prevent the unauthorized use of a x-ray system or the accidental production of radiation. Non-cabinet x-ray systems shall be kept locked with the key removed when not in use.

R313-35-40. Storage Precautions.

X-ray systems shall be secured to prevent tampering or removal by unauthorized personnel.

R313-35-50. Training Requirements.

In addition to the requirements of R313-18-12, an individual operating x-ray systems for non-medical applications shall be trained in the operating procedures for the x-ray system and the emergency procedures related to radiation safety for the facility. Records of training shall be made and maintained for three years after the termination date of the individual.

R313-35-60. Surveys.

In addition to the requirements of R313-15-501, radiation surveys of x-ray systems shall be performed:

(1) upon installation of the x-ray system; and

(2) following change to or maintenance of components of an x-ray system which effect the output, collimation, or shielding effectiveness.

R313-35-70. Radiation Survey Instruments.

Survey instruments used in determining compliance with R313-15 and R313-35 shall meet the following requirements:

(1) Instrumentation shall be capable of measuring a range from 0.02 millisieverts (2 millirem) per hour through 0.01 sievert (1 rem) per hour.

(2) Instrumentation shall be calibrated at intervals not to exceed 12 months and after instrument servicing, except for battery changes.

(3) For linear scale instruments, calibration shall be shown at two points located approximately one-third and two-thirds of full-scale on each scale. For logarithmic scale instruments, calibration shall be shown at mid-range of each decade, and at two points of at least one decade. For digital instruments, calibration shall be shown at three points between 0.02 and 10 millisieverts (2 and 1000 millirems) per hour.

(4) An accuracy of plus or minus 20 percent of the calibration source shall be demonstrated for each point checked

pursuant to R313-35-70(3).

(5) The registrant shall perform visual and operability checks of survey instruments before use on each day the survey instrument is to be used to ensure that the equipment is in good working condition. If survey instrument problems are found, the equipment shall be removed from service until repaired.

(6) Results of the instrument calibrations showing compliance with R313-35-70(3) and R313-35-70(4) shall be recorded and maintained for a period of three years from the date the record is made.

(7) Records demonstrating compliance with R313-35-70(5) shall be made when a problem is found. The records shall be maintained for a period of three years from the date the record is made.

R313-35-80. Cabinet X-ray Systems.

(1) The requirements as found in 21 CFR 1020.40, 1996 ed., are adopted and incorporated by reference.

(2) Individuals operating cabinet x-ray systems with conveyor belts shall be able to observe the entry port from the operator's position.

R313-35-90. Portable Package Inspection Systems.

Portable package inspection systems shall be registered in accordance with R313-16 and shall be exempt from inspection by representatives of the Director.

R313-35-100. Analytical X-Ray Systems Excluding Cabinet X-Ray Systems.

(1) Equipment. Analytical x-ray systems not contained in cabinet x-ray systems shall meet all the following requirements.

(a) A device which prevents the entry of portions of an individual's body into the primary x-ray beam path, or which causes the beam to be shut off upon entry into its path, shall be provided for open-beam configurations.

(i) Pursuant to R313-12-55(1), an application for an exemption from R313-35-100(1)(a) shall contain the following information:

(A) a description of the various safety devices that have been evaluated;

(B) the reason that these devices cannot be used; and

(C) a description of the alternative methods that will be employed to minimize the possibility of an accidental exposure, including procedures to assure that operators and others in the area will be informed of the absence of safety devices.

(ii) applications for exemptions to R313-35-100(1)(a) shall be submitted to the Director.

(b) Open-beam configurations shall be provided with a readily discernible indication of:

(i) the "on" or "off" status of the x-ray tube which shall be located near the radiation source housing if the primary beam is controlled in this manner; or

(ii) the "open" or "closed" status of the shutters which shall be located near ports on the radiation source housing, if the primary beam is controlled in this manner.

(c) Warning devices shall be labeled so that their purpose is easily identified and the devices shall be conspicuous at the beam port. On equipment installed after July 1, 1989, warning devices shall have fail-safe characteristics.

(d) Unused ports on radiation source housings shall be secured in the closed position in a manner which will prevent casual opening. Security requirements will be deemed met if the beam port cannot be opened without the use of tools that are not part of the closure.

(e) Analytical x-ray systems shall be labeled with a readily discernable sign or signs bearing a radiation symbol which meets the requirements of R313-15-901 and the words:

(i) "CAUTION-HIGH INTENSITY X-RAY BEAM," or words having a similar intent, on the x-ray tube housing; and

(ii) "CAUTION RADIATION - THIS EQUIPMENT PRODUCES RADIATION WHEN ENERGIZED," or words having a similar intent, near switches that energize an x-ray tube.

(f) On analytical x-ray systems with open-beam configurations which are installed after July 1, 1989, ports on the radiation source housing shall be equipped with a shutter that cannot be opened unless a collimator or a coupling has been connected to the port.

(g) An easily visible warning light labeled with the words "X-RAY ON," or words having a similar intent, shall be located near switches that energize an x-ray tube and near x-ray ports. They shall be illuminated only when the tube is energized.

(h) On analytical x-ray systems installed after July 1, 1989, warning lights shall have fail-safe characteristics.

(i) X-ray generators shall be supplied with a protective cabinet which limits leakage radiation measured at a distance of five centimeters from its surface so that they are not capable of producing a dose equivalent in excess of 2.5 microsieverts (0.25 millirem) in one hour.

(j) The components of an analytical x-ray system located in an uncontrolled area shall be arranged and include sufficient shielding or access control so that no radiation levels exist in areas surrounding the component group which could result in a dose to an individual present therein in excess of the dose limits given in R313-15-301.

(2) Personnel Requirements.

(a) An individual shall not be permitted to operate or maintain an analytical x-ray system unless the individual has received instruction which satisfies the requirements of R313-18-12(1). The instruction shall include:

(i) identification of radiation hazards associated with the use of the analytical x-ray system;

(ii) the significance of the various radiation warnings and safety devices incorporated into the analytical x-ray system, or the reasons they have not been installed on certain pieces of equipment and the extra precautions required in these cases;

(iii) proper operating procedures for the analytical x-ray system;

(iv) symptoms of an acute localized exposure; and

(v) proper procedures for reporting an actual or suspected exposure.

(b) Registrants shall maintain records which demonstrate compliance with the requirements of R313-35-100(2)(a) for a period of three years after the termination of the individual.

(c) Normal operating procedures shall be written and available to analytical x-ray system workers. An individual shall not be permitted to operate analytical x-ray systems using procedures other than those specified in the normal operating procedures unless the individual has obtained written approval of the registrant or the registrant's designee.

(d) An individual shall not bypass a safety device unless the individual has obtained the written approval of the registrant or the registrant's designee. Approval shall be for a specified period of time. When a safety device has been bypassed, a readily discernible sign bearing the words "SAFETY DEVICE NOT WORKING," or words having a similar intent, shall be placed on the radiation source housing.

(3) Personnel Monitoring. In addition to the requirements of R313-15-502, finger or wrist dosimetric devices shall be provided to and shall be used by:

(a) analytical x-ray system workers using equipment having an open-beam configuration and not equipped with a safety device; and

(b) personnel maintaining analytical x-ray systems if the maintenance procedures require the presence of a primary x-ray beam when local components in the analytical x-ray system are disassembled or removed.

(4) Posting. Areas or rooms containing analytical x-ray

systems not considered to be cabinet x-ray systems shall be conspicuously posted to satisfy the requirements in R313-15-902.

R313-35-105. Portable, Hand-Held, Non-Medical X-ray Systems.

(1) In addition to compliance to the provisions of Rule R313-35 the following sections are specific to portable, hand-held, non-medical x-ray systems, excluding portable handheld devices that are manufactured to provide inherent operator protection:

(a) Protective aprons of at least 0.5 millimeter lead equivalence shall be provided for the operator to protect the operator's torso and gonads from backscatter radiation while operating the x-ray source;

(b) Each operator of hand-held x-ray systems shall complete a training program supplied by the manufacturer prior to using the x-ray system. Records of training shall be maintained on file for examination by an authorized representative of the Director; and

(c) For hand-held x-ray systems, the provision in Subsection R313-35-110(1)(d) of the length of electrical cord for the dead-man switch is optional.

R313-35-110. Veterinary X-Ray Systems.

(1) Equipment. X-ray systems shall meet the following standards to be used for veterinary radiographic examinations.

(a) The leakage radiation from the diagnostic source assembly measured at a distance of one meter shall not exceed 25.8 uC/kg (100 milliroentgens) in one hour when the x-ray tube is operated at its leakage technique factors.

(b) Diaphragms, cones, or a stepless adjustable collimator shall be provided for collimating the useful beam to the area of clinical interest and shall provide the same degree of protection as is required of the diagnostic source housing.

(c) A device shall be provided to terminate the exposure after a preset time or exposure.

(d) A "dead-man type" exposure switch shall be provided, together with an electrical cord of sufficient length, so that the operator may stand out of the useful beam and at least six feet from the animal during x-ray exposures.

(e) For stationary or mobile x-ray systems, a method shall be provided for visually defining the perimeter of the x-ray field. The total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed six percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.

(f) For portable x-ray systems, a method shall be provided to align the center of the x-ray field with respect to the center of the image receptor to within six percent of the source to image receptor distance, and to indicate the source to image receptor distance to within six percent.

(2) Structural shielding. For stationary x-ray systems, the wall, ceiling, and floor areas shall provide enough shielding to meet the requirements of R313-15-301.

(3) Operating procedures.

(a) Where feasible, the operator shall stand well away from the useful beam and the animal during radiographic exposures.

(b) In applications in which the operator is not located beyond a protective barrier, clothing consisting of a protective apron having a lead equivalent of not less than 0.5 millimeters shall be worn by the operator and other individuals in the room during exposures.

(c) An individual other than the operator shall not be in the x-ray room while exposures are being made unless the individual's assistance is required.

(d) If the animal must be held by an individual, that individual shall be protected with appropriate shielding devices, for example, protective gloves and apron. The individual shall be so positioned that no unshielded part of that individual's body will be struck by the useful beam.

R313-35-120. X-Ray Systems Less than 1 MeV used for Non-Destructive Testing.

(1) Cabinet x-ray systems.

Cabinet x-ray systems shall meet the requirements of R313-35-80.

(2) Fixed Gauges.

(a) Warning Devices. A light, which is clearly visible from all accessible areas around the x-ray system, shall indicate when the x-ray system is operating.

(b) Personnel Monitoring. Notwithstanding R313-15-502(1)(a), individuals conducting x-ray system maintenance requiring the x-ray beam to be on shall be provided with and required to wear personnel monitoring devices.

(3) Industrial and Other X-ray Systems.

(a) Equipment.

(i) The registrant shall perform visual and operability checks of indication lights and warning lights before use on each day the equipment is to be used to ensure that the equipment is in good working condition. If equipment problems are found, the equipment shall be removed from service until repaired.

(ii) Inspection and routine maintenance of x-ray systems, interlocks, indication lights, exposure switches, and cables shall be made at intervals not to exceed six months or before the first use thereafter to ensure the proper functioning of components important to safety. If equipment problems are found, the equipment shall be removed from service until repaired.

(iii) Records demonstrating compliance with R313-35-120(3)(a)(i) shall be made when problems with the equipment are found. These records shall be maintained for a period of three years.

(iv) Records demonstrating compliance with R313-35-120(3)(a)(ii) shall be made. These records shall be maintained for a period of three years.

(b) Controls. X-ray systems which produce a high radiation area shall be controlled to meet the requirements of R313-15-601.

(c) Personnel Monitoring Requirements.

(i) Registrants shall not permit individuals to conduct x-ray operations unless all of the following conditions are met.

(A) Individuals shall wear a thermoluminescent dosimeter or film badge.

(I) Each film badge or thermoluminescent dosimeter shall be assigned to and worn by only one individual.

(II) Film badges shall be replaced at periods not to exceed one month and thermoluminescent dosimeters shall be replaced at periods not to exceed three months.

(B) Individuals shall wear a direct reading dosimeter if conducting non-destructive testing at a temporary job site or in a room or building not meeting the requirements of R313-15-301.

(I) Pocket dosimeters shall have a range from zero to two millisieverts (200 millirem) and must be recharged at the beginning of each shift.

(II) Direct reading dosimeters shall be read and the exposures recorded at the beginning and end of each shift. Records shall be maintained for three years after the record is made.

(III) Direct reading dosimeters shall be checked at intervals not to exceed 12 months for correct response to radiation and the results shall be recorded. Records shall be maintained for a period three years from the date the record is made. Acceptable dosimeters shall read within plus or minus 20 percent of the true radiation exposure.

(IV) If an individual's ion-chamber pocket dosimeter is found to be off scale or if the individual's electronic personnel dosimeter reads greater than 2 millisieverts (200 millirems), and the possibility of radiation exposure cannot be ruled out as the cause, the individual's film badge or thermoluminescent dosimeter shall be sent for processing within 24 hours. In addition, the individual shall not resume work with sources of radiation until a determination of the individual's radiation exposure has been made.

(d) Controls. In addition to the requirements of R313-15-601, barriers, temporary or otherwise, and pathways leading to high radiation areas shall be identified in accordance with R313-15-902.

(e) Surveillance. During non-destructive testing applications conducted at a temporary job site or in a room or building not meeting the requirements of R313-15-301, the operator shall maintain continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area.

R313-35-130. X-Ray Systems Greater than 1 MeV used for Non-Destructive Testing.

(1) Equipment.

(a) Individuals shall not receive, possess, use, transfer, own, or acquire a particle accelerator unless it is registered pursuant to R313-16-231.

(b) The registrant shall perform visual and operability checks of indication lights and warning lights before use on each day the equipment is to be used to ensure that the equipment is in good working condition. If equipment problems are found, the equipment shall be removed from service until repaired.

(c) Inspection and routine maintenance of x-ray systems, interlocks, indication lights, exposure switches, and cables shall be made at intervals not to exceed three months or before the first use thereafter to ensure the proper functioning of components important to safety. If equipment problems are found, the equipment shall be removed from service until repaired.

(d) Records demonstrating compliance with R313-35-130(1)(b) shall be made when problems with the equipment are found. These records shall be maintained for a period of three years.

(e) Records demonstrating compliance with R313-35-130(1)(c) shall be made. These records shall be maintained for a period of three years.

(f) Maintenance performed on x-ray systems shall be in accordance with the manufacturer's specifications.

(g) Instrumentation, readouts and controls on the particle accelerator control console shall be clearly identified and easily discernible.

(h) A switch on the accelerator control console shall be routinely used to turn the accelerator beam off and on. The safety interlock system shall not be used to turn off the accelerator beam, except in an emergency.

(2) Shielding and Safety Design Requirements.

(a) An individual who has satisfied a criterion listed in R313-16-292, shall be consulted in the design of a particle accelerator's installation and called upon to perform a radiation survey when the accelerator is first capable of producing radiation.

(b) Particle accelerator installations shall be provided with primary or secondary barriers which are sufficient to assure compliance with R313-15-201 and R313-15-301.

(c) Entrances into high radiation areas or very high radiation areas shall be provided with interlocks that shut down the machine under conditions of barrier penetration.

(d) When a radiation safety interlock system has been tripped, it shall only be possible to resume operation of the accelerator by manually resetting controls first at the position where the interlock has been tripped, and then at the main control console.

(e) Safety interlocks shall be on separate electrical circuits which shall allow their operation independently of other safety interlocks.

(f) Safety interlocks shall be fail-safe. This means that they must be designed so that defects or component failures in the interlock system prevent operation of the accelerator.

(g) The registrant may apply to the Director for approval of alternate methods for controlling access to high or very high radiation areas. The Director may approve the proposed alternatives if the registrant demonstrates that the alternative methods of control will prevent unauthorized entry into a high or very high radiation area, and the alternative method does not prevent individuals from leaving a high or very high radiation area.

(h) A "scram" button or other emergency power cutoff switch shall be located and easily identifiable in high radiation areas or in very high radiation areas. The cutoff switch shall include a manual reset so that the accelerator cannot be restarted from the accelerator control console without resetting the cutoff switch.

(i) Safety and warning devices, including interlocks, shall be checked for proper operation at intervals not to exceed three months, and after maintenance on the safety and warning devices. Results of these tests shall be maintained for inspection at the accelerator facility for three years.

(j) A copy of the current operating and emergency procedures shall be maintained at the accelerator control panel.

(k) Locations designated as high radiation areas or very high radiation areas and entrances to locations designated as high radiation areas or very high radiation areas shall be equipped with easily observable flashing or rotating warning lights that operate when radiation is being produced.

(l) High radiation areas or very high radiation areas shall have an audible warning device which shall be activated for 15 seconds prior to the possible creation of the high radiation area or the very high radiation area. Warning devices shall be clearly discernible in high radiation areas or in very high radiation areas. The registrant shall instruct personnel in the vicinity of the particle accelerator as to the meaning of this audible warning signal.

(m) Barriers, temporary or otherwise, and pathways leading to high radiation areas or very high radiation areas shall be identified in accordance with R313-15-902.

(3) Personnel Requirements.

(a) Registrants shall not permit individuals to act as particle accelerator operators until the individuals have complied with the following:

(i) been instructed in radiation safety; and

(ii) been instructed pursuant to R313-35-50 and the applicable requirements of R313-15.

(iii) Records demonstrating compliance with R313-35-130(3)(a)(i) and R313-35-130(3)(a)(ii) shall be maintained for a period of three years from the termination date of the individual.

(b) Registrants shall not permit an individual to conduct x-ray operations unless the individual meets the personnel monitoring requirements of R313-35-120(3)(c).

(4) Radiation Monitoring Requirements.

(a) At particle accelerator facilities, there shall be available appropriate portable monitoring equipment which is operable and has been calibrated for the radiations being produced at the facility. On each day the particle accelerator is to be used, the portable monitoring equipment shall be tested for proper operation.

(b) When changes have been made in shielding, operation, equipment, or occupancy of adjacent areas, a radiation protection survey shall be performed and documented by an

individual who has satisfied a criterion listed in R313-16-292 or the individual designated as being responsible for radiation safety.

(c) Records of radiation protection surveys, calibrations, and instrumentation tests shall be maintained at the accelerator facility for inspection by representatives of the Director for a period of three years.

R313-35-140. Duties and Authorities of a Radiation Safety Officer.

Facilities operating x-ray systems under R313-35-130 shall appoint a Radiation Safety Officer. The specific duties and authorities of the Radiation Safety Officer include, but are not limited to:

(1) establishing and overseeing all operating, emergency, and ALARA procedures as required by R313-15;

(2) ensuring that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the registrant's program;

(3) overseeing and approving the training program for radiographic personnel, ensuring that appropriate and effective radiation protection practices are taught;

(4) ensuring that required radiation surveys are performed and documented in accordance with the R313-35-130(4);

(5) ensuring that personnel monitoring devices are calibrated and used properly by occupationally exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by R313-15-1203; and

(6) ensuring that operations are conducted safely and to assume control for instituting corrective actions including stopping of operations when necessary.

KEY: industry, x-rays, veterinarians, surveys
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R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-37. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.
R313-37-1. Purpose and Authority.

(1) The rules in R313-37 prescribe requirements for the physical protection program for a licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

(3) The requirements of R313-37 are in addition to, and not in substitution for, the other requirements of these rules.

R313-37-2. Scope.

These requirements provide reasonable assurance of the security of category 1 and category 2 quantities of radioactive material by protecting these materials from theft or diversion. Specific requirements for access to material, and use, transfer, and transportation of material are included.

R313-37-3. Clarifications or Exceptions.

For purposes of R313-37, 10 CFR 37.5, 37.11(c), 37.21 through 37.43(d)(8), 37.45 through 37.103, and Appendix A to 10 CFR 37 (2014), are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 37.5, exclude definitions for "Act", "Agreement State", "Becquerel", "Byproduct Material", "Commission", "Curie", "Government Agency", "License", "License issuing authority", "Lost or missing licensed material", "Person", "State", and "United States";

(b) In 10 CFR 37.77(a)(1), exclude the wording "Notifications to the NRC must be to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The notification to the NRC may be made by email to RAMQC_SHIPMENTS@nrc.gov or by fax to 301-816-5151."; and

(c) In 10 CFR 37.81(g), exclude the wording "In addition, the licensee shall provide one copy of the written report addressed to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.".

(2) The substitution of the following wording:

(a) "Utah Radiation Control Rule" for references to:

(i) "Commission regulation" in 10 CFR 37.101; and

(ii) "regulation" in 10 CFR 37.103;

(b) "Utah Radiation Control Rules" for reference to:

(i) "regulations and laws" in 10 CFR 37.31(d);

(ii) "Commission requirements" in 10 CFR 37.43(a)(3) and 37.43(c)(1)(ii); and

(iii) "regulations in this part" in 10 CFR 37.103;

(c) "Director" for references to:

(i) "appropriate NRC regional office listed in Section 30.6(a)(2) of this Chapter" in 10 CFR 37.45(b);

(ii) "Commission" in 10 CFR 37.103;

(iii) "NRC" in 10 CFR 37.31(d), 37.43(c)(3)(iii), 37.57(a) (second instance of NRC) and (c), 37.77, and 37.77(a)(1) (first instance) and (3), and 37.81(g);

(iv) "NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 29555-0001" in 10 CFR 37.77(c)(2) and 37.77(d);

(v) "NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 29555-0001" in 10 CFR 37.77(c)(1) (second instance);

(vi) "NRC's Operations Center" in 10 CFR 37.81(a) and (b);

(vii) "NRC's Operations Center (301-816-5100)" in 10 CFR 37.57(a) and (b) and 37.81(a) through (f);

(viii) "NRC regional office listed in section 30.6(a)(2) of this chapter" in 10 CFR 37.41.(a)(3); and

(ix) "NRC regional office specified in section 30.6 of this chapter" in 10 CFR 37.41(a)(3);

(d) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for references to "Commission or an Agreement State" in 10 CFR 37.71 and 37.71(a) and (b);

(e) "U.S. Nuclear Regulatory Commission's Security Orders or the legally binding requirement issued by Agreement States" for references to "Security Orders" in 10 CFR 37.21(a)(3), 37.25(b)(2), and 37.41(a)(3);

(f) "mail, hand delivery, or electronic submission" for references to "an appropriate method listed in section 37.7" in 10 CFR 37.57(c) and 37.81(g); and

(g) "shall, by mail, hand delivery, or electronic submission," for reference to "shall use an appropriate method listed in section 37.7 to" in 10 CFR 37.27(c).

(3) The substitution of the following rule references:

(a) "R313-19-41(4)" for reference to "section 30.41(d) of this chapter." In 10 CFR 37.71;

(b) "R313-19-100 (incorporating 10 CFR 71.97 by reference)" for reference to "section 71.97 of this chapter" in 10 CFR 37.73(b);

(c) "R313-19-100 (incorporating 10 CFR 71.97(b) by reference)" for reference to "section 71.97(b) of this chapter" in 10 CFR 37.73(b); and

(d) "10 CFR 73" for references to "part 73 of this chapter" in 10 CFR 37.21(c)(4), 37.25(b)2), and 37.27(a)(4).

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R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-38. Licenses and Radiation Safety Requirements for Well Logging.
R313-38-1. Purpose and Authority.

(1) Rule R313-38 prescribes requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging in a single well. This rule also prescribes radiation safety requirements for persons using licensed materials in these operations.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(3) and 19-3-104(6).

(3) The provisions and requirements of Rule R313-38 are in addition to, and not in substitution for, the other requirements of these rules. In particular, the provisions of Rules R313-15, R313-18, R313-19, and R313-22 apply to applicants and licensees subject to these rules.

R313-38-2. Scope.

(1) The requirements of Rule R313-38 do not apply to the issuance of a license authorizing the use of licensed material in tracer studies involving multiple wells, such as field flooding studies, or to the use of sealed sources auxiliary to well logging but not lowered into wells.

R313-38-3. Clarifications or Exceptions.

For purposes of Rule R313-38, 10 CFR 39 (2013), is incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following 10 CFR sections: 39.1, 39.5, 39.8, 39.11, 39.101, and 39.103;

(2) The exclusion of the following 10 CFR references within 10 CFR 39: Sec. 40.32, and Sec. 70.23;

(3) The exclusion of "licensed material" in 10 CFR 39.2 definitions;

(4) The substitution of the following wording:

(a) License for reference to NRC license;

(b) Utah Radiation Control Rules for the references to:

(i) The Commission's regulations;

(ii) The NRC regulations;

(iii) NRC regulations; and

(iv) Pertinent Federal regulations;

(c) Director for reference to Commission, except as stated in Subsection R313-38-3(4)(d);

(d) Representatives of the Director for the references to the Commission in:

(i) 10 CFR 39.33(d);

(ii) 10 CFR 39.35(a);

(iii) 10 CFR 39.37;

(iv) 10 CFR 39.39(b); and

(v) 10 CFR 39.67(f);

(e) Director for references to:

(i) NRC in:

(A) 10 CFR 39.63(l);

(B) 10 CFR 39.77(c)(1)(i) and (ii); and

(C) 10 CFR 39.77(d)(9); and

(ii) Appropriate NRC Regional Office in:

(A) 10 CFR 39.77(a);

(B) 10 CFR 39.77(c)(1); and

(C) 10 CFR 39.77(d);

(iii) Appropriate NRC Regional Office listed in appendix D of part 20 of this chapter in:

(A) 10 CFR 39.35(d)(2)

(f) Director, the U.S. Nuclear Regulatory Commission or an Agreement State for the references to:

(i) Commission or an Agreement State in:

(A) 10 CFR 39.35(b); and

(B) 10 CFR 39.43(d) and (e); and

(ii) Commission pursuant to Sec. 39.13(c) or by an Agreement State in:

(A) 10 CFR 39.43(c); and

(B) 10 CFR 39.51;

(g) In 10 CFR 39.35(d)(1), persons specifically licensed by the Director, the U.S. Nuclear Regulatory Commission, or an Agreement State for the reference to an NRC or Agreement State licensee that is authorized;

(h) In 10 CFR 39.75(e), a U.S. Nuclear Regulatory Commission or an Agreement State for the reference to the Agreement State;

(5) The substitution of the following Title R313 references for specific 10 CFR references:

(a) Section R313-12-3 for the reference to Sec. 20.1003 of this chapter;

(b) Section R313-12-54 for the reference to 10 CFR 39.17;

(c) Subsection R313-12-55(1) for the reference to 10 CFR 39.91;

(d) Rule R313-15 for references to:

(i) Part 20; and

(ii) Part 20 of this chapter;

(e) Subsection R313-15-901(1) for the reference to Sec. 20.1901(a);

(f) Section R313-15-906 for the reference to Sec. 20.1906 of this chapter;

(g) Sections R313-15-1201 through R313-15-1203 for the references to:

(i) Secs. 20.2201-20.2202; and

(ii) Sec. 20.2203;

(h) Rule R313-18 for the reference to part 19;

(i) Section R313-19-30 for the reference to Sec. 150.20 of this chapter;

(j) Section R313-19-50 for the references to:

(i) Sec. 30.50; and

(ii) Part 21 of this chapter;

(k) Section R313-19-71 for the reference to Sec. 30.71;

(l) Section R313-19-100 for the references to:

(i) 10 CFR Part 71; and

(ii) Sec. 71.5 of this chapter; and

(m) Section R313-22-33 for the reference to 10 CFR 30.33;

(n) Rules R313-15, R313-18, and R313-38 for corresponding references to:

(i) Parts 19, 20, and 39 of this chapter;

(ii) A copy of parts 19, 20, and 39 of NRC regulations.

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R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-1. Definitions.

"Assimilative Capacity" means the difference between the numeric criteria and the concentration in the waterbody of interest where the concentration is less than the criterion.

"Biological assessment" means an evaluation of the biological condition of a water body using biological surveys and other direct measurements of composition or condition of the resident living organisms.

"Biological criteria" means numeric values or narrative descriptions that are established to protect the biological condition of the aquatic life inhabiting waters that have been given a certain designated aquatic life use.

"Board" means the Utah Water Quality Board.

"BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

"Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

"Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

"CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

"COD" means chemical oxygen demand.

"Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water rules.

"Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

"Director" means the Director of the Division of Water Quality.

"Division" means the Utah State Division of Water Quality.

"Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

"Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

"Existing Uses" means those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

"Human-induced stressor" means perturbations directly or indirectly caused by humans that alter the components, patterns, and/or processes of an ecosystem.

"Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

"Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

"Influent" means the total wastewater flow entering a wastewater treatment works.

"Great Salt Lake impounded wetland" means wetland ponds which have been formed by dikes or berms to control and retain the flow of freshwater sources in the immediate proximity of Great Salt Lake.

"Large underground wastewater disposal system" means the same type of device as an onsite wastewater system except that it is designed to handle more than 5,000 gallons per day of domestic wastewater, or wastewater that originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other underground wastewater disposal system not covered under the definition of an onsite wastewater system. The Division controls the installation of such systems.

"Onsite wastewater system" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorption system.

"Operating Permit" is a State issued permit issued to any wastewater treatment works covered under Rules R317-3 or R317-5 with the following exceptions:

A. Any wastewater treatment permitted under Ground Water Quality Protection R317-6.

B. Any wastewater treatment permitted under Underground Injection Control (UIC) Program R317-7.

C. Any wastewater treatment permitted under Utah Pollutant Discharge Elimination System (UPDES) R317-8.

D. Any wastewater treatment permitted under Approvals and Permits for a Water Reuse Project R317-13.

E. Any wastewater treatment permitted by a Local Health Department under Onsite Wastewater Systems R317-4.

"Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

"Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

"Sewage" is synonymous with the term "domestic wastewater".

"Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

"Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

"SS" means suspended solids.

Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

"Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

"TSS" means total suspended solids.

"Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It includes onsite wastewater systems and large underground wastewater disposal systems.

"Use Attainability Analysis" means a structured scientific assessment of the factors affecting the attainment of the uses specified in R317-2-6. The factors to be considered in such an analysis include the physical, chemical, biological, and economic use removal criteria as described in 40 CFR 131.10(g) (1-6).

"Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

"Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

"Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

R317-1-2. General Requirements.

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these rules.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers) without first receiving a permit to do so from the Director or its authorized representative, except as provided herein.

A. Body Politic Required. A permit for construction of a new treatment works or a sewerage system, or modifications to an existing treatment works or sewerage system for multiple units under separate ownership will be issued only if the treatment works or sewerage system are under the sponsorship of a body politic as defined in R317-1-1.

B. Submission of Plans. Any person desiring a permit shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Director for review. Liquid waste storage facilities at animal feeding operations must be designed and constructed in accordance with Table 2a - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth greater than 2 feet; Table 2b - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth of 2 feet or less; and Table 2c - Criteria for runoff ponds with a water depth of 2 feet of less and a storage period less than 90 days annually, contained in the U.S.D.A. Natural Resource Conservation Service (NRCS) Conservation Practice Standard, Waste Storage Facility, Code 313, dated August 2006. This rule incorporates by reference Tables 2a, 2b, and 2c in the August 2006 U.S.D.A. NRCS Conservation Practice Standard, Waste Storage Facility, Code 313.

C. Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these rules.

D. Approval of Plans. Issuance of a construction permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes.

E. Permit Expiration. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

F. Exceptions.

1. Wastewater facilities that discharge to an existing sewer system and serve only units that are under single ownership, or serve multiple units under separate ownership where the wastewater facilities are under the sponsorship of the public sewer system to which they discharge. This exception does not apply to pumping stations having the installed capacity in excess of 1 million gallons per day (3,785 cubic meters per day).

2. Onsite Wastewater Disposal Systems. Construction plans and specifications for onsite wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with rules for onsite wastewater disposal systems adopted by the Water Quality Board. Compliance with the rules shall be determined by an on-site inspection by the appropriate health authority.

3. Small Animal Waste (Manure) Lagoons and Runoff Ponds. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.3 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these rules and under circumstances which assure compliance with water quality standards in R317-2.

2.4 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these rules and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

R317-1-3. Requirements for Waste Discharges.

3.1 Compliance With Water Quality Standards.

All persons discharging wastes into any of the waters of the State shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of Rule R317-2 Water Quality Standards, except that the Director may waive compliance with these requirements for specific criteria listed in Rule R317-2 where it is determined that the designated use is not being impaired or significant use improvement would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Director.

3.2 Compliance With Secondary Treatment Requirements.

All persons discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/L, nor shall the arithmetic mean exceed 35 mg/L during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/L nor shall the arithmetic mean exceed 30 mg/L

during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/L, nor shall the arithmetic mean exceed 35 mg/L during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000 per 100 mL or 200 per 100 mL respectively, nor shall the geometric mean exceed 2500 per 100 mL or 250 per 100 mL respectively, during any 7-day period; or, the geometric mean of E. coli bacteria in effluent samples collected during any 30-day period shall not exceed 126 per 100 mL nor shall the geometric mean exceed 158 per 100 mL respectively during any 7-day period. Exceptions to this requirement may be allowed by the Director where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Director may allow exceptions to the requirements of Subsections R317-1-3.2.A, R317-1-3.2.B, and R317-1-3.2.D where the discharge will be of short duration and where there will be no significant detrimental effect on receiving water quality or downstream beneficial uses.

G. The Director may allow that the BOD5 and TSS effluent concentrations for discharging domestic wastewater lagoons shall not exceed 45 mg/L for a monthly average nor 65 mg/L for a weekly average provided the following criteria are met:

1. the lagoon system is operating within the organic and hydraulic design capacity established by Rule R317-3;

2. the lagoon system is being properly operated and maintained;

3. the treatment system is meeting all other permit limits;

4. there are no significant or categorical industrial users (IU) defined by 40 CFR Part 403, unless it is demonstrated to the satisfaction of the Director that the IU is not contributing constituents in concentrations or quantities likely to significantly affect the treatment works; and

5. a Waste Load Allocation (WLA) indicates that the increased permit limits would not impair beneficial uses of the receiving stream.

3.3 Technology-based Limits for Controlling Phosphorus Pollution.

A. Technology-based Phosphorus Effluent Limits (TBPEL)

1. All non-lagoon treatment works discharging wastewater to surface waters of the state shall provide treatment processes which will produce effluent less than or equal to an annual mean of 1.0 mg/L for total phosphorus.

2. The TBPEL shall be achieved by January 1, 2020, or no later than January 1, 2025, after a variance has been granted under Subsection R317-1-3.3.C.1.e.

B. Discharging Lagoons -Phosphorus Loading Cap

1. No TBPEL will be instituted for discharging treatment lagoons. Instead, each discharging lagoon will be evaluated to determine the current annual average total phosphorus load measured in pounds per year based on monthly average flow rates and concentrations. Absent field data to determine these loads, and in case of intermittent discharging lagoons, the phosphorus load cap will be estimated by the Director.

2. A cap of 125% of the current annual total phosphorus load will be established and referred to as phosphorus loading cap. Once the lagoon's phosphorus loading cap has been reached, the owner of the facility will have five years to construct treatment processes or implement treatment alternatives to prevent the total phosphorus loading cap from being exceeded.

3. The load cap shall become effective July 1, 2018.

C. Variances for TBPEL and Phosphorus Loading Caps

1. The Director may authorize a variance to the TBPEL or phosphorus loading cap under any of the following conditions:

a. Where an existing TMDL has allocated a total phosphorus wasteload to a treatment works, no TBPEL or phosphorus loading cap, as applicable, will be applied.

b. If the owner of a discharging treatment works can demonstrate that imposing the TBPEL or phosphorus loading cap would result in an economic hardship, an alternative TBPEL or phosphorus loading cap that would not cause economic hardship may be applied. "Economic hardship" for a publicly owned treatment works is defined as sewer service costs that, as a result of implementing a TBPEL or phosphorus loading cap, would be greater than 1.4% of the median adjusted gross household income of the service area based on the latest information compiled by the Utah State Tax Commission, after inclusion of grants, loans, or other funding made available by the Utah Water Quality Board or other sources. The Director will consider other demonstrations of economic hardship on a case-by-case basis.

c. If the owner of a discharging treatment works can demonstrate that the TBPEL or phosphorus loading cap are clearly unnecessary to protect waters downstream from the point of discharge, no TBPEL or phosphorus loading cap will be applied.

d. If the owner of the discharging treatment works can demonstrate that a commensurate phosphorus reduction can be achieved in receiving waters using innovative alternative approaches such as water quality trading, seasonal offsets, effluent reuse, or land application.

e. Where the owner of a non-lagoon discharging treatment works demonstrates due diligence toward construction of a treatment facility designed to meet the TBPEL, the compliance date shall be no later than January 1, 2025.

2. All variances to TBPEL and phosphorus loading caps shall be revisited no more frequently than every five years, or when a substantive change in facility operations or a substantive facility upgrade occurs, to determine if the rationale used to justify the conditions in Subsection R317-1-3.3.C remains applicable.

3. For treatment works required to implement TBPEL or a phosphorus loading cap, the demonstration under Subsection R317-1-3.3.C must be made by January 1, 2018. Unless this demonstration is made, the owner of the discharging treatment works must proceed to implement the TBPEL or phosphorus loading cap, as applicable, in accordance with, respectively, Subsections R317-1-3.3.A and R317-1-3.3.B.

D. Facility Optimization to Remove Total Inorganic Nitrogen

1. If the owner of a discharging treatment works agrees to optimize the owner's facility, either through operational changes, a capital construction project, or both, to reduce effluent total inorganic nitrogen concentrations to a level agreeable to the Director, a waiver of up to ten years from meeting either water quality-based effluent limits or technology-based effluent limits for total inorganic nitrogen will be granted. This includes meeting any total inorganic nitrogen limit that may result from a TMDL or other water quality study that is specific to the receiving water of the treatment works.

2. The waiver period under this section would begin upon implementation of the optimization improvements or another date agreed to by the owner of the treatment works and the Director.

3. The elements of the waiver under this section will be identified in a compliance agreement that will be incorporated into the facility's UPDES permit.

4. The waiver identified under this section must be granted before January 1, 2020. Thereafter, no such waiver will be considered or granted.

E. Monitoring

1. All discharging treatment works are required to implement, at a minimum, monthly monitoring of:

a. influent for total phosphorus (as P) and total Kjeldahl nitrogen (as N) concentrations; and

b. effluent for total phosphorus and orthophosphate (as P), and ammonia, nitrate-nitrite, and total Kjeldahl nitrogen (as N).

2. The Director may authorize a variance to the monitoring requirements identified in Subsection R317-1-3.3.D.1.

3. All monitoring under Subsection R317-1-3.3.D shall be based on 24-hour composite samples by use of an automatic sampler or by combining a minimum of four grab samples collected at least two hours apart within a 24-hour period.

4. These monitoring requirements shall be self-implementing beginning July 1, 2015.

3.4 Pollutants In Diverted Water Returned To Stream.

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these rules shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other treatment approved by the Director as being feasible and equally protective of human health and the environment.

4.2 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

R317-1-5. Use of Industrial Wastewaters.

5.1 Use of industrial wastewaters (not containing human pathogens) shall be considered for approval by the Director based on a case-specific analysis of human health and environmental concerns.

R317-1-6. Disposal of Domestic Wastewater Treatment Works Sludge.

6.1 General. No person shall use, dispose, or otherwise manage sewage sludge through any practice for which pollutant limits, management practices, and operational standards for pathogens and vector attraction reduction requirements are established in 40 CFR 503, July 1, 1994, except in accordance with such requirements.

6.2 Permit. All treatment works producing, treating and disposing of sewage sludge must comply with applicable permit requirements at R317-3, 6 and 8.

6.3 Septic Tank Contents. The dumping or spreading of septic tank contents is prohibited except in conformance with 40 CFR 503 and R317-550-7.

6.4 Effective Date. Notwithstanding the effective date for incorporation by reference of 40 CFR 503 provided in R317-8-1.10(9), those portions of 40 CFR 503 specified in R317-1-6.1 and 6.3 are effective immediately.

R317-1-7. TMDLs.

The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:

7.1 Middle Bear River -- February 23, 2010
7.2 Chalk Creek -- December 23, 1997
7.3 Otter Creek -- December 23, 1997
7.4 Little Bear River -- May 23, 2000
7.5 Mantua Reservoir -- May 23, 2000
7.6 East Canyon Creek -- September 14, 2010
7.7 East Canyon Reservoir -- September 14, 2010
7.8 Kents Lake -- September 1, 2000
7.9 LaBaron Reservoir -- September 1, 2000
7.10 Minersville Reservoir -- September 1, 2000
7.11 Puffer Lake -- September 1, 2000
7.12 Scofield Reservoir -- September 1, 2000
7.13 Onion Creek (near Moab) -- July 25, 2002
7.14 Cottonwood Wash -- September 9, 2002
7.15 Deer Creek Reservoir -- September 9, 2002
7.16 Hyrum Reservoir -- September 9, 2002
7.17 Little Cottonwood Creek -- September 9, 2002
7.18 Lower Bear River -- September 9, 2002
7.19 Malad River -- September 9, 2002
7.20 Mill Creek (near Moab) -- September 9, 2002
7.21 Spring Creek -- September 9, 2002
7.22 Forsyth Reservoir -- September 27, 2002
7.23 Johnson Valley Reservoir -- September 27, 2002
7.24 Lower Fremont River -- September 27, 2002
7.25 Mill Meadow Reservoir -- September 27, 2002
7.26 UM Creek -- September 27, 2002
7.27 Upper Fremont River -- September 27, 2002
7.28 Deep Creek -- October 9, 2002
7.29 Uinta River -- October 9, 2002
7.30 Pineview Reservoir -- December 9, 2002
7.31 Browne Lake -- February 19, 2003
7.32 San Pitch River -- November 18, 2003
7.33 Newton Creek -- June 24, 2004
7.34 Panguitch Lake -- June 24, 2004
7.35 West Colorado -- August 4, 2004
7.36 Silver Creek -- August 4, 2004
7.37 Upper Sevier River -- August 4, 2004
7.38 Lower and Middle Sevier River -- August 17,2004
7.39 Lower Colorado River -- September 20, 2004
7.40 Upper Bear River -- August 4, 2006
7.41 Echo Creek -- August 4, 2006
7.42 Soldier Creek -- August 4, 2006
7.43 East Fork Sevier River -- August 4, 2006
7.44 Koosharem Reservoir -- August 4, 2006
7.45 Lower Box Creek Reservoir -- August 4, 2006
7.46 Otter Creek Reservoir -- August 4, 2006
7.47 Thistle Creek -- July 9, 2007

7.48 Strawberry Reservoir -- July 9, 2007
7.49 Matt Warner Reservoir -- July 9, 2007
7.50 Calder Reservoir -- July 9, 2007
7.51 Lower Duchesne River -- July 9, 2007
7.52 Lake Fork River -- July 9, 2007
7.53 Brough Reservoir -- August 22, 2008
7.54 Steinaker Reservoir -- August 22, 2008
7.55 Red Fleet Reservoir -- August 22, 2008
7.56 Newcastle Reservoir -- August 22, 2008
7.57 Cutler Reservoir -- February 23, 2010
7.58 Pariette Draw -- September 28, 2010
7.59 Emigration Creek -- September 1, 2011
7.60 Jordan River -- June 27, 2012
7.61 Colorado River -- December 5, 2013
7.62 Echo Reservoir -- March 26, 2014
7.63 Rockport Reservoir -- March 26, 2014
7.64 Nine Mile Creek -- October 27, 2016

R317-1-8. Penalty Criteria for Civil Settlement Negotiations.

8.1 Introduction. Section 19-5-115 of the Water Quality Act provides for penalties of up to $10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to $25,000 per day for willful violations. Because the law does not provide for assessment of administrative penalties, the Attorney General initiates legal proceedings to recover penalties where appropriate.

8.2 Purpose And Applicability. These criteria outline the principles used by the State in civil settlement negotiations with water pollution sources for violations of the UWPCA and/or any permit, rule or order adopted under it. It is designed to be used as a logical basis to determine a reasonable and appropriate penalty for all types of violations to promote a more swift resolution of environmental problems and enforcement actions.

To guide settlement negotiations on the penalty issue, the following principles apply: (1) penalties should be based on the nature and extent of the violation; (2) penalties should at a minimum, recover the economic benefit of noncompliance; (3) penalties should be large enough to deter noncompliance; and (4) penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

In determining whether a civil penalty should be sought, the State will consider the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigative costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good faith efforts of the violator; ability of the violator to pay; and the possible deterrent effect of a penalty to prevent future violations.

8.3 Penalty Calculation Methodology. The statutory maximum penalty should first be calculated, for comparison purposes, to determine the potential maximum penalty liability of the violator. The penalty which the State seeks in settlement may not exceed this statutory maximum amount.

The civil penalty figure for settlement purposes should then be calculated based on the following formula: CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

PENALTY: Violations are grouped into four main penalty categories based upon the nature and severity of the violation. A penalty range is associated with each category. The following factors will be taken into account to determine where the penalty amount will fall within each range:

A. History of compliance or noncompliance. History of noncompliance includes consideration of previous violations and degree of recidivism.

B. Degree of willfulness and/or negligence. Factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

C. Good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State.

Category A - $7,000 to $10,000 per day. Violations with high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.

2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - $2,000 to $7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.

2. Creation of a serious hazard to public health or the environment.

3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.

4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - $500 to $2,000 per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.

2. Substantial non-compliance with the requirements of a compliance schedule.

3. Substantial non-compliance with monitoring and reporting requirements.

4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.

5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to $500 per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.

2. Minor violations of compliance schedule requirements.

3. Minor violations of reporting requirements.

4. Illegal discharges not covered in Categories A, B and C.

5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

ADJUSTMENTS: The civil penalty shall be calculated by adding the following adjustments to the penalty amount determined above: 1) economic benefit gained as a result of non-compliance; 2) investigative costs incurred by the State and/or other governmental levels; 3) documented monetary costs associated with environmental damage.

ECONOMIC AND LEGAL CONSIDERATIONS: An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an attempt to ascertain the maximum penalty the court is likely to award, and/or the strength of the case.

8.4 Mitigation Projects. In some exceptional cases, it may be appropriate to allow the reduction of the penalty assessment in recognition of the violator's good faith undertaking of an environmentally beneficial mitigation project. The following criteria should be used in determining the eligibility of such projects:

A. The project must be in addition to all regulatory compliance obligations;

B. The project preferably should closely address the

environmental effects of the violation;

C. The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

D. The project must primarily benefit the environment rather than benefit the violator;

E. The project must be judicially enforceable;

F. The project must not generate positive public perception for violations of the law.

8.5 Intent Of Criteria/Information Requests. The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

R317-1-9. Electronic Submissions and Electronic Signatures.

(a) Pursuant to the authority of Utah Code Ann. Subsection 46-4-501(a), the submission of Discharge Monitoring Reports and related information may be conducted electronically through the EPA's NetDMR program, provided the requirements of subsection (b) are met.

(b) A person may submit Discharge Monitoring Reports and related information only after (1) completion of a Subscriber Agreement in a form designated by the Director to ensures that all requirements of 40 CFR 3, EPA's Cross - Media Electronic Reporting Regulation (CROMERR) are met; and (2) completion of subsequent steps specified by EPA's CROMERR, including setting up a subscriber account.

(c) The Subscriber Agreement will continue until terminated by its own terms, until modified by mutual consent or until terminated with 60 days written notice by any party.

(d) Any person who submits a Discharge Monitoring Report or related information under the NetDMR program, and who electronically signs the report or related information, is, by providing an electronic signature, making the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

KEY: water pollution, waste disposal, nutrient limits, effluent standards
January 30, 2017 19-5
Notice of Continuation October 2, 2012

R317. Environmental Quality, Water Quality.
R317-12. Certification of Water Pollution Control Facility or Freestanding Pollution Control Property.
R317-12-1. Authority, Purpose and Scope.

1.1 Authorization. These rules are administered by the division authorized by Title 19 Chapter 12.

1.2 Purpose. The purpose of this rule is to protect public health and the environment by encouraging industries to install Pollution Control Facilities and Freestanding Pollution Control Properties through sales and use tax incentives.

1.3 Scope. This rule shall apply to purchases described in Section 19-12-201.

R317-12-2. Definitions.

"Director" means the director as defined in Section R317-1-1.

"Freestanding Pollution Control Property" means freestanding pollution control property as defined in Subsection 19-12-102(6).

"Treatment Works" means treatment works as defined in Section R317-1-1.

"Waste" means waste as defined in Section R317-1-1.

"Water Pollution" means pollution as defined in Section R317-1-1.

R317-12-3. Application for Certification.

3.1 An application for certification shall be made on forms provided by the Director.

3.2 The application shall include all information requested thereon and such additional information as is requested by the Director. At a minimum, the application shall contain:

A. a description of the Pollution Control Facility or Freestanding Property;

B. a description of the property, product or service for a purchase or lease of property, a part, or a service for which a person seeks to claim a sales and use tax exemption under Section 19-12-201;

C. the existing or proposed operational procedure for the Pollution Control Facility or Freestanding Pollution Control Property; and

D. a statement of the purpose served or to be served by the Pollution Control Facility or Freestanding Pollution Control Property.

3.3 The Director may require an application to contain additional information that the Director finds necessary to determine whether to grant certification under Section 19-12-303.

R317-12-4. Issuance of Certification.

4.1 The date the application is filed shall be the date of receipt by the Director of the final item of information requested, and this filing date shall initiate the 120-day review period under Section 19-12-303.

4.2 The Director shall issue a certification of a Pollution Control Facility or a Freestanding Pollution Control Property to the applicant if the Director determines that:

A. the application meets the requirements of the Pollution Control Act in Section 19-12-101;

B. the facility or property that is the subject of the application is a Pollution Control Facility or a Freestanding Pollution Control Property as defined in Section 19-12-102;

C. the person who files the application is a person described in Section 19-12-301; and

D. the purchases or leases for which the person seeks to claim a sales and use tax exemption are exempt under Section 19-12-201.

4.3 If the Director denies certification under this Section to a person who files an application, the Director shall provide a written statement of the reason for the denial to the person no later than 120 days after the date described in Subsection R317-12-4.1.

4.4 The Director may issue one certification for one or more Pollution Control Facilities or Freestanding Pollution Control Properties that constitute an operational unit.

4.5 If the Director does not issue or deny a certification within 120 days of the date described in Subsection R317-12-4.1, the Director shall issue a certification to the person at the person's request.

R317-12-5. Revocation of Certification and Appeal.

5.1 Revocation of prior certification shall be made for any of the circumstances prescribed in Section 19-12-304.

5.2 An appeal of a denial of certification or a revocation of certification by the Director may be contested by filing a Request for Agency Action as provided in Rule R305-7.

KEY: water pollution, tax exemptions, equipment
August 27, 2014 19-12-101
Notice of Continuation January 17, 2017 19-12-102
19-12-201 through 19-12-203
19-12-301 through 19-12-305

R337. Financial Institutions, Credit Unions.
R337-10. Rule Designating Applicable Federal Law for Credit Unions Subject to the Jurisdiction of the Department of Financial Institutions.
R337-10-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-1-325.

(2) Violations of federal law designated by this rule may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325.

(3) This rule designates which one or more federal laws the department may enforce and are applicable to credit unions subject to the jurisdiction of the department.

R337-10-2. Definitions.

(1) "Department" means the Department of Financial Institutions.

(2) "Federal Law" means:

(a) a statute passed by the Congress of the United States; or

(b) a final regulation:

(i) adopted by an administrative agency of the United States government; and

(ii) published in the code of federal regulations or the federal register.

R337-10-3. Applicable Federal Law.

In accordance with Section 7-1-325, the following federal laws are applicable to credit unions subject to the jurisdiction of the department:

(1) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;

(2) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;

(3) Truth in Savings Act, 12 U.S.C. Sec. 4301 et seq., and its implementing federal regulations;

(4) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing federal regulations;

(5) Federal Credit Union Act ("Prompt Corrective Action"), 12 U.S.C. Sec. 1790d, and its implementing federal regulations;

(6) Federal Credit Union Act, 12 U.S.C. Sec. 1757(5)("Loans and lines of credit to officials"), and its implementing federal regulations;

(7) Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq., and its implementing federal regulations;

(8) Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq., and its implementing federal regulations;

(9) Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., and its implementing federal regulations;

(10) Electronic Fund Transfers Act, 15 U.S.C. Sec. 1693 et seq., and its implementing federal regulations;

KEY: financial institutions, federal law
January 22, 2007 7-1-325(2)
Notice of Continuation January 18, 2017

R343. Financial Institutions, Nondepository Lenders.
R343-1. Rule Governing Form of Disclosures For Title Lenders, Who Are Under the Jurisdiction of the Department of Financial Institutions.
R343-1-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-24-203(2).

(2) This rule establishes minimum standards for the form of disclosure to protect the public interest.

R343-1-2. Definitions.

(1) "Department" means the Department of Financial Institutions.

R343-1-3. Form of Disclosure.

(1) Content of disclosure form. The disclosure form required by this rule must include:

(a) a statement about the cost of obtaining the loan in the format prescribed in Section 226.18 and Appendix H of Truth in Lending 12 CFR 226;

(b) a statement that failure to make any payment by the end of the contractual grace period may result in repossession of the property pledged to secure the loan;

(c) a statement that title loans are typically high cost loans and that lower cost loans are usually available to consumers with reasonable credit. Consumers should compare the "Annual Percentage Rate" of the loan with other loans that are available from other lenders that typically offer loans;

(d) a statement that if the consumer is obtaining the loan because of problems with their credit they may wish to obtain credit counseling or financial advice from entities listed under "Credit and Debt Counseling" in the yellow pages or the department or a governmental agency which regulates Utah lenders.

(e) the statements described above shall be disclosed on the front side of the disclosure form preceding the borrowers' signature line.

(2) Type size of the disclosure form. The disclosure form required by this rule must be of the following font sizes:

(a) the terms for "Annual Percentage Rate" and "Finance Charge" shall be 12 point;

(b) no other disclosure shall be as conspicuous except the creditor's identity;

(c) all other disclosures shall be at least 9 point.

(3) Disclosure requirements; timing and method of disclosures.

(a) The title lender shall provide the disclosure form to the consumer in writing before the consumer completes the loan agreement.

(b) Disclosures must be readily understandable. The disclosures required by this rule must be conspicuous, simple, direct and designed to call attention to the nature and significance of the information provided. Examples of methods that could call attention to the nature and significance of the information provided include:

(i) A plain-language heading to call attention to the disclosures;

(ii) Boldface or italics for key words; and

(iii) Distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

KEY: financial institutions
January 9, 2007 7-24-203(2)
Notice of Continuation January 6, 2017

R380. Health, Administration.
R380-77. Coordination of Patient Identification and Validation Services.
R380-77-1. Purpose and Authority.

As authorized by Section 26-1-30(30), the purpose of this rule is to establish the methods in which health care providers, public health entities, and health care insurers may coordinate among themselves to verify the identities of the individuals they serve.

R380-77-2. Establishment of Advisory Committee.

(1) The Department shall establish a patient identity and validation service advisory committee to assist the Department in establishing methods as part of the Department's duties under Section 26-1-30(30). The committee serves in a consultative and advisory capacity to the Department.

(2) The committee shall be comprised of individuals knowledgeable in health information technology, health informatics and health care delivery systems, including representatives from the Department, community-based organizations, hospital and clinic administration, health care insurers, professional health care associations, patients, and informatics researchers.

(3) The Utah Digital Health Service Commission established by Section 26-9f may advise the Department to oversee this advisory committee.

R380-77-3. Duties and Responsibilities.

(1) The committee shall:

(a) Promote collaborative efforts among community stakeholders regarding participation in shared patient identification services as a means to reduce duplicate services, improve quality and efficiency of care, and to promote patient safety.

(b) Provide input and guidance to the Department concerning existing community resources and experiences to advance the adoption and implementation of shared patient identification services.

(c) Advise the Department regarding adoption of standards for the electronic exchange of personally identifiable information between health care providers, public health entities, and health care insurers.

(d) Define the minimum amount of personally identifiable information necessary to disambiguate and validate identities across organizational information systems.

(e) Make recommendations on the information technology architecture, hardware, software, application, network configuration, and other technical aspects that allow for the implementation of shared patient identification services and technical compatibility among participants.

(f) Identify, evaluate, and make recommendations on a strategic and sustainable business model.

(g) Provide information and evaluate industry trends on existing information exchanges that link and verify person-centric records across organization boundaries.

(h) Make recommendations and coordinate the creation, dissemination, and implementation of policies and procedures to address participation in and utilization of shared patient identification services.

KEY: identity, validation, health
February 1, 2017 **26-1-30(30)**
26-1-37

R382. Health, Children's Health Insurance Program.
R382-10. Eligibility.
R382-10-1. Authority.

(1) This rule is authorized by Title 26, Chapter 40.

(2) The purpose of this rule is to set forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP).

R382-10-2. Definitions.

(1) The Department adopts and incorporates by reference the definitions found in Subsections 2110(b) and (c) of the Compilation of Social Security Laws, in effect January 1, 2015.

(2) The Department adopts the definitions in Section R382-1-2. In addition, the Department adopts the following definitions:

(a) "American Indian or Alaska Native" means someone having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

(b) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(c) "Children's Health Insurance Program" (CHIP) means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(d) "Co-payment and co-insurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under CHIP.

(e) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee.

(f) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for CHIP under contract with the Department.

(g) "Employer-sponsored health plan" means a health insurance plan offered by an employer either directly or through Utah's Health Marketplace (Avenue H).

(h) "Ex parte review" means a review process the agency conducts without contacting the recipient for information as defined in 42 CFR 457.343.

(i) "Federally Facilitated Marketplace" (FFM) means the entity individuals can access to enroll in health insurance and apply for assistance from insurance affordability programs such as Advanced Premium Tax Credits, Medicaid and CHIP.

(j) "Modified Adjusted Gross Income" (MAGI) means the income determined using the methodology defined in 42 CFR 435.603(e).

(k) "Presumptive eligibility" means a period of time during which a child may receive CHIP benefits based on preliminary information that the child meets the eligibility criteria.

(l) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

(m) "Review month" means the last month of the eligibility certification period for an enrollee during which the eligibility agency determines an enrollee's eligibility for a new certification period.

(n) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in Rule R414-320.

R382-10-3. Actions on Behalf of a Minor.

(1) A parent, legal guardian or an adult who assumes responsibility for the care or supervision of a child who is under 19 years of age may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

(2) If the child's parent, responsible adult, or legal guardian wants to designate an authorized representative, he must so indicate in writing to the eligibility agency.

(3) A child who is under 19 years of age and is independent of a parent or legal guardian may assume these responsibilities. The eligibility agency may not require a child who is independent to have an authorized representative if the child can act on his own behalf; however, the eligibility agency may designate an authorized representative if the child needs a representative but cannot make a choice either in writing or orally in the presence of a witness.

(4) Where the statutes or rules governing the CHIP program require a child to take an action, the parent, legal guardian, designated representative or adult who assumes responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who assumes responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(5) The eligibility agency shall consider notice to the parent, legal guardian, designated representative, or adult who assumes responsibility for the care or supervision of a child to be notice to the child. The eligibility agency shall send notice to a child who assumes responsibility for himself.

R382-10-4. Applicant and Enrollee Rights and Responsibilities.

(1) A parent or an adult who assumes responsibility for the care or supervision of a child may apply or reapply for CHIP benefits on behalf of a child. A child who is independent may apply on his own behalf.

(2) If a person needs assistance to apply, the person may request assistance from a friend, family member, the eligibility agency, or outreach staff.

(3) The applicant must provide verification requested by the eligibility agency to establish the eligibility of the child, including information about the parents.

(4) Anyone may look at the eligibility policy manuals located on-line or at any eligibility agency office, except at outreach or telephone locations.

(5) If the eligibility agency determines that the child received CHIP coverage during a period when the child was not eligible for CHIP, the parent, child, or legal guardian who arranges for medical services on behalf of the child must repay the Department for the cost of services.

(6) The parent or child, or other responsible person acting on behalf of a child must report certain changes to the eligibility agency.

(a) The following changes are reportable within 10 calendar days of the day of the change:

(i) An enrollee begins to receive coverage or to have access to coverage under a group health plan or other health insurance coverage;

(ii) An enrollee leaves the household or dies;

(iii) An enrollee or the household moves out of state;

(iv) Change of address of an enrollee or the household; and

(v) An enrollee enters a public institution or an institution for mental diseases.

(b) Certain changes are reportable as part of the review process if these changes occurred anytime during the certification period and before the 10-day notice due date in the review month. A change in the following must be reported as part of the review process for any household member:

(i) Income source;

(ii) Gross income of $25 or more;

(iii) Tax filing status;

(iv) Pregnancy or termination of a pregnancy;

(v) Number of dependents claimed as tax dependents;

(vi) Earnings of a child;

(vii) Marital status; and

(viii) Student status of a child under 24 years of age.

(7) An applicant and enrollee may review the information that the eligibility agency uses to determine eligibility.

(8) An applicant and enrollee have the right to be notified about actions that the agency takes to determine their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action as defined in Section R414-301-6 and Section R414-301-7.

(9) An enrollee in CHIP must pay quarterly premiums to the agency, and co-payments or co-insurance amounts to providers for medical services that the enrollee receives under CHIP.

R382-10-5. Verification and Information Exchange.

(1) The provisions of Section R414-308-4 apply to applicants and enrollees of CHIP.

(2) The Department and the eligibility agency shall safeguard applicant and enrollee information in accordance with Section R414-301-4.

(3) The Department or the eligibility agency may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(4) The Department adopts and incorporates by reference 42 CFR 457.348, 457.350, and 457.380, October 1, 2012 ed.

(5) The Department shall enter into an agreement with the Centers for Medicare and Medicaid Services (CMS) to allow the FFM to screen applications and reviews submitted through the FFM for CHIP eligibility.

(a) The agreement must provide for the exchange of file data and eligibility status information between the Department and the FFM as required to determine eligibility and enrollment in insurance affordability programs, and eligibility for advance premium tax credits and reduced cost sharing.

(b) The agreement applies to agencies under contract with the Department to provide CHIP eligibility determination services.

(6) The Department and the eligibility agency shall release information to the Title IV-D agency and Social Security Administration to determine benefits.

R382-10-6. Citizenship and Alienage.

(1) To be eligible to enroll in CHIP, a child must be a citizen or national of the United States (U.S.) or a qualified alien.

(2) The provisions of Section R414-302-3 regarding citizenship and alien status requirements apply to applicants and enrollees of CHIP.

(3) The Department elects to cover applicants and recipients who are under 19 years of age and lawfully present as defined in 42 U.S.C. 1396b(v) and 42 U.S.C. 1397gg(e)(1), and referenced in Section CS18 of the Utah CHIP State Plan.

R382-10-7. Utah Residence.

(1) The Department adopts and incorporates by reference, 42 CFR 457.320(d), October 1, 2012 ed. A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian or Alaska Native child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

R382-10-8. Residents of Institutions.

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Compilation of Social Security Laws are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R382-10-9. Social Security Numbers.

(1) The eligibility agency may request an applicant to provide the correct Social Security Number (SSN) or proof of application for a SSN for each household member at the time of application for the program. The eligibility agency shall use the SSN in accordance with the requirements of 42 CFR 457.340(b), October 1, 2012 ed., which is incorporated by reference.

(2) The eligibility agency shall require that each applicant claiming to be a U.S. citizen or national provide their SSN for the purpose of verifying citizenship through the Social Security Administration in accordance with Section 2105(c)(9) of the Compilation of the Social Security Laws.

(3) The eligibility agency may request the SSN of a lawful permanent resident alien applicant, but may not deny eligibility for failure to provide an SSN.

(4) The Department may assign a unique CHIP identification number to an applicant or beneficiary who meets one of the exceptions to the requirement to provide an SSN.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b) of the Compilation of Social Security Laws.

(2) A child who is covered under a group health plan or other health insurance that provides coverage in Utah, including coverage under a parent's or legal guardian's employer, as defined in 29 CFR 2590.701-4, July 1, 2013 ed., is not eligible for CHIP assistance.

(3) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the countable MAGI-based income for the individual, is not eligible for CHIP. The child is considered to have access to coverage even when the employer only offers coverage during an open enrollment period, and the child has had at least one chance to enroll.

(4) An eligible child who has access to an employer-sponsored health plan, where the cost to enroll the child in the least expensive plan offered by the employer equals or exceeds 5% of the countable MAGI-based income for the individual may choose to enroll in either CHIP or UPP.

(a) To enroll in UPP, the child must meet UPP eligibility requirements.

(b) If the UPP eligible child enrolls in the employer-sponsored health plan or COBRA coverage, but the plan does not include dental benefits, the child may receive dental-only benefits through CHIP.

(c) If the employer-sponsored health plan or COBRA coverage includes dental, the applicant may choose to enroll the child in the dental plan and receive an additional reimbursement from UPP, or receive dental-only benefits through CHIP.

(d) A child enrolled in CHIP who gains access to or enrolls in an employer-sponsored health plan may switch to the UPP program if the child meets UPP eligibility requirements.

(5) The cost of coverage includes the following:

(a) the premium;

(b) a deductible, if the employer-sponsored plan has a deductible; and

(c) the cost to enroll the employee, if the employee must be enrolled to enroll the child.

(6) Subject to the provisions published in 42 CFR

457.805(b), October 1, 2015 ed., which the Department adopts and incorporates by reference, the eligibility agency shall deny eligibility and impose a 90-day waiting period for enrollment under CHIP if the applicant or a custodial parent voluntarily terminates health insurance that provides coverage in Utah within the 90 days before the application date. In addition, the agency may not apply a 90-day waiting period in the following situations:

(a) a non-custodial parent voluntarily terminates coverage;

(b) the child is voluntarily terminated from insurance that does not provide coverage in Utah;

(c) the child is voluntarily terminated from a limited health insurance plan;

(d) a child is terminated from a custodial parent's insurance because ORS reverses the forced enrollment requirement due to the insurance being unaffordable;

(e) voluntary termination of COBRA;

(f) voluntary termination of Utah Comprehensive Health Insurance Pool coverage; or

(g) voluntary termination of UPP reimbursed, employer-sponsored coverage.

(7) If the 90-day ineligibility period for CHIP ends in the month of application, or by the end of the month that follows, the eligibility agency shall determine the applicant's eligibility.

(a) If eligible, enrollment in CHIP begins the day after the 90-day ineligibility period ends.

(b) If the 90-day ineligibility period does not end by the end of the month that follows the application month, the eligibility agency shall deny CHIP eligibility.

(8) The Department shall comply with the provisions of enrollment after the waiting period in accordance with 42 CFR 457.340, October 1, 2015 ed., which the Department adopts and incorporates by reference.

(9) A child with creditable health coverage operated or financed by Indian Health Services is not excluded from enrolling in CHIP.

(10) A child who has access to state-employee health insurance as defined in 42 CFR 457.310 is not eligible for CHIP assistance.

R382-10-11. Household Composition and Income Provisions.

(1) The Department adopts and incorporates by reference, 42 CFR 457.315 (October 1, 2015), regarding the household composition and income methodology to determine eligibility for CHIP.

(a) The eligibility agency shall count in the household size, the number of unborn children that a pregnant household member expects to deliver.

(b) The Department elects the option in 42 CFR 435.603(f)(3)(iv)(B).

(c) The eligibility agency will treat separated spouses, who are not living together, as separate households.

(2) Any individual described in Subsection R382-10-11(1) who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

(3) The eligibility agency may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(4) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(5) The eligibility agency shall count as income cash support received by an individual when:

(a) it is received from the tax filer who claims a tax exemption for the individual;

(b) the individual is not a spouse or child of the tax filer; and

(c) the cash support exceeds a nominal amount set by the Department.

(6) The eligibility agency determines eligibility by deducting an amount equal to 5% of the federal poverty guideline, as defined in 42 CFR 435.603(d)(4).

R382-10-12. Age Requirement.

(1) A child must be under 19 years of age sometime during the application month to enroll in the program. An otherwise eligible child who turns 19 years of age during the application month may receive CHIP for the application month and the four-day grace period.

(2) The month in which a child turns 19 years of age is the last month of eligibility for CHIP enrollment.

R382-10-13. Budgeting.

(1) The eligibility agency determines countable household income according to MAGI-based methodology as required by 42 CFR 457.315.

(2) The eligibility agency shall determine a child's eligibility and cost sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility.

(a) The eligibility agency determines prospective eligibility by using the best estimate of the household's average monthly income expected to be received or made available to the household during the upcoming eligibility period.

(b) The eligibility agency shall include in its estimate, reasonably predictable income changes such as seasonal income or contract income, to determine the average monthly income expected to be received during the certification period.

(c) The eligibility agency prorates income that is received less often than monthly over the eligibility period to determine an average monthly income.

(3) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The eligibility agency may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(4) The eligibility agency determines farm and self-employment income by using the individual's recent tax return forms or other verifications the individual can provide. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the eligibility agency may request income information from a recent time period during which the individual had farm or self-employment income. The eligibility agency deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses to determine net self-employment income, if those expenses are expected to occur in the future.

R382-10-14. Assets.

An asset test is not required for CHIP eligibility.

R382-10-15. Application and Eligibility Reviews.

(1) The Department adopts and incorporates by reference 42 CFR 457.330, 457.340, 457.343, and 457.348, October 1, 2013 ed.

(2) The provisions of Section R414-308-3 apply to applicants for CHIP, except for Subsection R414-308-3(10) and the three months of retroactive coverage.

(3) Individuals can apply without having an interview. The eligibility agency may interview applicants and enrollee's, the parents or spouse, and any adult who assumes responsibility

for the care or supervision of the child, when necessary to resolve discrepancies or to gather information that cannot be obtained otherwise.

(4) The eligibility agency shall complete a periodic review of an enrollee's eligibility for CHIP medical assistance in accordance with the requirements of 42 CFR 457.343.

(5) If an enrollee fails to respond to a request for information to complete the review during the review month, the agency shall end the enrollee's eligibility effective at the end of the review month and send proper notice to the enrollee.

(a) If the enrollee responds to the review or reapplies within three calendar months of the review closure date, the eligibility agency shall treat the response as a new application without requiring the enrollee to reapply. The application processing period then applies for this new request for coverage.

(b) If the enrollee is determined eligible based on this reapplication, the new certification period begins the first day of the month in which the enrollee contacts the agency to complete the review if verification is provided within the application processing period. The four day grace period may apply. If the enrollee fails to return verification within the application processing period, or if the enrollee is determined ineligible, the eligibility agency shall send a denial notice to the enrollee.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(6) Except as defined in R382-10-15(5), the enrollee must reapply for CHIP if the enrollee's case is closed for one or more calendar months.

(7) If the eligibility agency sends proper notice of an adverse decision during the review month, the agency shall change eligibility for the month that follows.

(8) If the eligibility agency does not send proper notice of an adverse change for the month that follows, the agency shall extend eligibility to that month. The eligibility agency shall send proper notice of the effective date of an adverse decision. The enrollee does not owe a premium for the due process month.

(9) If the enrollee responds to the review in the review month and the verification due date is in the month that follows, the eligibility agency shall extend eligibility to the month that follows. The enrollee must provide all verification by the verification due date.

(a) If the enrollee provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.

(b) If the enrollee does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility effective at the end of the month in which the eligibility agency sends proper notice of the closure.

(c) If the enrollee returns all verification after the verification due date and before the effective closure date, the eligibility agency shall treat the date that it receives all verification as a new application date. The eligibility agency shall determine eligibility and send a notice to the enrollee.

(d) The eligibility agency may not continue eligibility while it determines eligibility. The new certification date for the application is the day after the effective closure date if the enrollee is found eligible.

(10) The eligibility agency shall provide ten-day notice of case closure if the enrollee is determined to be ineligible or if the enrollee fails to provide verification by the verification due date.

(11) If eligibility for CHIP enrollment ends, the eligibility agency shall review the case for eligibility under any other medical assistance program without requiring a new application. The eligibility agency may request additional verification from the household if there is insufficient information to make a determination.

(12) An applicant must report at application and review whether any of the children in the household for whom enrollment is being requested have access to or are covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(13) The eligibility agency shall deny an application or review if the enrollee fails to respond to questions about health insurance coverage for children whom the household seeks to enroll or renew in the program.

R382-10-16. Eligibility Decisions.

(1) The Department adopts and incorporates by reference 42 CFR 457.350, October 1, 2013, ed., regarding eligibility screening.

(2) The eligibility agency shall determine eligibility for CHIP within 30 days of the date of application. If the eligibility agency cannot make a decision in 30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the eligibility agency's control delay the eligibility decision, the eligibility agency shall document the reason for the delay in the case record.

(3) The eligibility agency may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility when the agency does not determine eligibility within that time.

(4) The eligibility agency shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdraws the application and the eligibility agency sends a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant cannot be located or does not respond to requests for information within the 30-day application period.

(5) The eligibility agency shall redetermine eligibility every 12 months.

(6) At application and review, the eligibility agency shall determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid.

(a) A child who is eligible for Medicaid coverage is not eligible for CHIP.

(b) An eligible child who must meet a spenddown to receive Medicaid and chooses not to meet the spenddown may enroll in CHIP.

(7) If an enrollee asks for a new income determination during the CHIP certification period and the eligibility agency finds the child is eligible for Medicaid, the agency shall end CHIP coverage and enroll the child in Medicaid.

R382-10-17. Effective Date of Enrollment and Renewal.

(1) Subject to the limitations in Section R414-306-6, Section R382-10-10, and the provisions in Subsection R414-308-3(7), the effective date of CHIP enrollment is the first day of the application month.

(2) If the eligibility agency receives an application during the first four days of a month, the agency shall allow a grace enrollment period that begins no earlier than four days before the date that the agency receives a completed and signed application.

(a) If the eligibility agency allows a grace enrollment period that extends into the month before the application month, the days of the grace enrollment period do not count as a month in the 12-month enrollment period.

(b) During the grace enrollment period, the individual must receive medical services, meet eligibility criteria, and have an emergency situation that prevents the individual from applying. The Department may not pay for any services that the individual receives before the effective enrollment date.

(3) For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of

enrollment is the date of birth or placement for adoption if the family requests the coverage within 60 days of the birth or adoption. If the family makes the request more than 60 days after the birth or adoption, enrollment in CHIP becomes effective the first day of the month in which the date of report occurs, subject to the limitations in Section R414-306-6, Section R382-10-10, and the provisions of Subsection R382-10-17(2).

(4) For an individual who transfers from the Federally Facilitated Marketplace (FFM), the effective date of enrollment to add a newborn or adopted child is the date of birth or placement for adoption if the individual requests FFM coverage within 60 days of the birth or adoption. If the request is more than 60 days after the birth or adoption, enrollment in CHIP becomes effective the first day of the month in which the date of report occurs, subject to the limitations in Section R414-306-6, Section R382-10-10, and the provisions of Subsection R382-10-17(2).

(5) The effective date of enrollment for a new certification period after the review month is the first day of the month after the review month, if the review process is completed by the end of the review month. If a due process month is approved, the effective date of enrollment for a renewal is the first day of the month after the due process month if the review process is completed by the end of the due process month. The enrollee must complete the review process and continue to be eligible to be reenrolled in CHIP at review.

R382-10-18. Enrollment Period and Benefit Changes.

(1) Subject to the provisions in Subsection R382-10-18(2), a child determined eligible for CHIP receives 12 months of coverage that begins with the effective month of enrollment.

(2) CHIP coverage may end or change before the end of the 12-month certification period if the child:

(a) turns 19 years of age;

(b) moves out of the state;

(c) becomes eligible for Medicaid;

(d) leaves the household;

(e) is not eligible, or is eligible for a different plan due to a change described in Subsection R382-10-4(6)(b);

(f) begins to be covered under a group health plan or other health insurance coverage;

(g) gains access to state-employee health benefits as defined in 42 CFR 457.310;

(h) enters a public institution or an institution for mental disease;

(i) fails to respond to a request to verify access to employer-sponsored health coverage;

(j) fails to respond to a request to verify reportable changes as described in Subsection R382-10-4(6)(b); or

(k) does not pay the quarterly premium.

(3) The agency evaluates changes and may re-determine eligibility when it receives a change report as described in Subsection R382-10-4(6). If the agency requests verification of the change, the agency shall give the client at least 10 days to provide verification. The agency shall provide proper notice of an adverse action.

(4) If a client reports a change that occurs during the certification period and requests a redetermination, the agency shall re-determine eligibility.

(a) If an enrollee gains access to health insurance under an employer-sponsored plan or COBRA coverage, the enrollee may switch to UPP. The enrollee must report the health insurance within 10 calendar days of enrolling, or within 10 calendar days of when coverage begins, whichever is later. The employer-sponsored plan must meet UPP criteria.

(b) If the change would cause an adverse action, eligibility shall remain unchanged through the end of the certification period.

(c) If the change results in a better benefit, the agency shall take the following actions:

(i) If the change makes the enrollee eligible for Medicaid, the eligibility agency shall end CHIP eligibility and enroll the child in Medicaid.

(ii) If the change results in a lower premium, the decrease is effective as follows:

(A) The premium change is effective the month of report if income decreased that month and the family provides timely verification of income;

(B) The premium change is effective the month following the report month if the decrease in income is for the following month and the family provides timely verification of income;

(C) The premium change is effective the month in which verification of the decrease in income is provided, if the family does not provide timely verification of income.

(5) Failure to make a timely report of a reportable change may result in an overpayment of benefits and case closure.

R382-10-19. Quarterly Premiums.

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) The eligibility agency may not charge a premium to a child who is American Indian or Alaska Native.

(b) A family with countable income up to 150% of the federal poverty level must pay a quarterly premium of $30.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of $75.

(d) The agency shall charge the family the lowest premium amount when the family has two or more children, and those children qualify for different quarterly premium amounts.

(2) The eligibility agency shall end CHIP coverage and assess a $15 late fee to a family who does not pay its quarterly premium by the premium due date.

(3) The agency may reinstate coverage if the family pays the premium and the late fee by the last day of the month immediately following the termination.

(4) A child is ineligible for CHIP for three months if CHIP is terminated for failure to pay the quarterly premium. The child must reapply at the end of the three months. If eligible, the agency shall approve eligibility without payment of the past due premiums or late fee.

(5) The eligibility agency may not charge the household a premium during a due process month associated with the periodic eligibility review.

(6) The eligibility agency shall assess premiums that are payable each quarter for each month of eligibility.

R382-10-20. Termination and Notice.

(1) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or periodic eligibility review.

(2) The eligibility agency shall notify an enrollee in writing ten calendar days before the effective date of an action that adversely affects the enrollee's eligibility.

(3) Notices under Section R382-10-20 shall provide the following information:

(a) the action to be taken;

(b) the reason for the action;

(c) the regulations or policy that support the action when the action is a denial, closure or an adverse change to eligibility;

(d) the applicant's or enrollee's right to a hearing;

(e) how an applicant or enrollee may request a hearing; and

(f) the applicant's or enrollee's right to represent himself, use legal counsel, a friend, relative, or other spokesperson.

(4) The eligibility agency need not give ten-day notice of termination if:

(a) the child is deceased;
(b) the child moves out-of- state and is not expected to return;
(c) the child enters a public institution or an institution for mental diseases; or
(d) the child's whereabouts are unknown and the post office has returned mail to indicate that there is no forwarding address.

R382-10-21. Case Closure or Withdrawal.
(1) The eligibility agency shall end a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time before the eligibility agency makes a decision on the application.
(2) The eligibility agency shall comply with the requirements of 42 CFR 457.350(i), regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs.

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R386. Health, Disease Control and Prevention, Epidemiology.
R386-702. Communicable Disease Rule.
R386-702-1. Purpose Statement.

(1) The Communicable Disease Rule is adopted under authority of Sections 26-1-30, 26-6-3, and 26-23b.

(2) This rule outlines a multidisciplinary approach to communicable and infectious disease control and emphasizes reporting, surveillance, isolation, treatment and epidemiological investigation to identify and control preventable causes of infectious diseases. Reporting requirements and authorizations are specified for communicable and infectious diseases, outbreaks, and unusual occurrence of any disease. Each section has been adopted with the intent of reducing disease morbidity and mortality through the rapid implementation of established practices and procedures.

(3) The successes of medicine and public health dramatically reduced the risk of epidemics and early loss of life due to infectious agents during the twentieth century. However, the emergence of diseases such as Middle Eastern Respiratory Syndrome (MERS), and the rapid spread of diseases such as West Nile virus to the United States from other parts of the world, made possible by advances in transportation, trade, food production, and other factors, highlight the continuing threat to health from infectious diseases. Continual attention to these threats and cooperation among all health care providers, government agencies, and other entities that are partners in protecting the public's health are crucial to maintain and improve the health of the citizens of Utah.

R386-702-2. Definitions.

(1) Terms in this rule defined in Section 26-6-2:
(a) Carrier
(b) Communicable disease
(c) Contact
(d) Epidemic
(e) Infection
(f) Schools
(2) Terms in this rule defined in Section 26-6-6:
(a) Health care provider
(3) Terms in this rule defined in Section 26-21-2:
(a) Assisted living facilities
(b) Nursing care facilities
(4) Terms in this rule defined in Section 26-23b-102:
(a) Bioterrorism
(5) Terms in this rule defined in Section 26-39-102:
(a) Childcare programs
(6) Terms in this rule defined in Section 78B-3-403:
(a) Health care facilities
(7) Terms in this rule defined in Section 62A-15-602:
(a) Mental health facilities
(8) Terms in this rule defined in Section R386-80-2:
(a) Local health department
(9) In addition, for purposes of this rule:

(a) "Blood and plasma center" is defined as a blood bank, blood storage facility, plasma center, hospital, any another facility where blood or blood products are collected, or any facility where blood services are provided.

(b) "Care facilities licensed through the Department of Human Services" is described as any facility licensed through the Utah Department of Human Services, and includes adult day care facilities, adult foster care facilities, crisis respite facilities, domestic violence shelters and treatment programs, foster care homes, mental health treatment programs, residential treatment and day treatment facilities for persons with disabilities, substance abuse treatment programs, and youth treatment programs.

(c) "Case" is defined as any person, living or deceased, identified as having a communicable disease, condition, or syndrome that meets criteria for being reportable under this rule, or that is otherwise under public health investigation.

(d) "Clinic" is defined as any facility where a health care provider practices.

(e) "Condition" is defined as an abnormal state of health that may interfere with a person's regular feelings of wellbeing.

(f) "Correctional facility" is defined as an facility that forcibly confines an individual under the authority of the government, including but not limited to prisons, detention centers, jails, juvenile detention centers.

(g) "Department" is defined as the Utah Department of Health.

(h) "Diagnostic facility" is defined as the facility where the case or suspect case was seen and evaluated by a healthcare provider.

(i) "Dispensary" is defined as an office in a school, hospital, industrial plant, or other organization that dispenses medications or medical supplies.

(j) "Electronic reporting" is defined as the transmission of laboratory or health related data from reporting entities to the Department using standard message structure and vocabulary, and do not require any hand keying for data to be incorporated into Department databases.

(k) "Encounter" is defined as an instance of an individual presenting to a health care facility.

(l) "Event" is defined as any communicable disease, condition, laboratory result, syndrome, outbreak, epidemic, or other public health hazard that meets criteria for being reportable under this rule.

(m) "Good Samaritan" is defined as a person who gives reasonable aid to strangers in grave physical distress.

(n) "Invasive disease" is defined as infection occurring in parts of the body where organisms are not normally present, such as the bloodstream, organs, or the meninges.

(o) "Laboratory" is defined as any facility that receives, refers, or analyzes clinical specimens.

(p) "Manual reporting" is defined as the transmission of laboratory or health related data from reporting entities to the Department using processes that require hand keying for data to be incorporated into Department databases.

(q) "Normally sterile site" is defined as a part of the body where organisms are not normally present, such as the bloodstream, organs, or the meninges.

(r) "Outbreak" is defined as the increased occurrence of any communicable disease, health condition, or syndrome in a community, institution, or region; or two or more cases of a communicable disease, health condition, or syndrome in persons with a common exposure.

(s) "Public health hazard" is defined as the presence of an infectious organism or condition in the environment which endangers the health of a specified population.

(t) "Suspect case" is defined as any person, living or deceased, who a reporting entity, local health department, or the Department believes might be a case, but for whom it has not been established that the criteria necessary to become a case have been met.

(u) "Syndrome" is defined as a set of signs or symptoms that often occur together.

R386-702-3. Reportable Events.

(1) The Department declares the following events to be of concern to public health and reporting is required or authorized by Sections 26-6-6 and 26-23b.

(2) Events Reportable by All Entities.

(a) Acute flaccid myelitis;

(b) Adverse event resulting from smallpox vaccination (Vaccinia virus, Orthopox virus);

(c) Anaplasmosis (Anaplasma phagocytophilium);

(d) Anthrax (Bacillus anthracis);

(e) Antibiotic resistant organisms from any clinical specimen that meet the following criteria:
(i) Resistant to a carbapenem, or with demonstrated carbapenemase, in:
(A) Acinetobacter species,
(B) Enterobacter species,
(C) Escherichia coli, or
(D) Klebsiella species,
(ii) Resistant or intermediate resistant to vancomycin in:
(A) Staphylococcus aureus (VISA/VRSA);
(f) Arbovirus infection, including but not limited to:
(i) Chikungunya virus infection,
(ii) West Nile virus infection, and
(iii) Zika virus infection, including congenital;
(g) Babesiosis (Babesia spp.);
(h) Botulism (Clostridium botulinum);
(i) Brucellosis (Brucella spp.);
(j) Campylobacteriosis (Campylobacter spp.);
(k) Chancroid (Haemophilus ducreyi);
(l) Chickenpox (Varicella zoster virus, VZV, Human herpesvirus 3, HHV-3);
(m) Chlamydia (Chlamydia trachomatis);
(n) Coccidioidomycosis (Coccidioides spp.), also known as valley fever;
(o) Colorado tick fever (Colorado tick fever virus, Coltivirus spp.), also known as American mountain tick fever;
(p) Cryptosporidiosis (Cryptosporidium spp.);
(q) Cyclosporiasis (Cyclospora spp., including Cyclospora cayetanensis);
(r) Dengue fever (Dengue virus);
(s) Diphtheria (Corynebacterium diphtheriae);
(t) Ehrlichiosis (Ehrlichia spp.);
(u) Encephalitis;
(v) Shiga toxin-producing Escherichia coli (STEC) infection;
(w) Giardiasis (Giardia lamblia), also known as beaver fever;
(x) Gonorrhea (Neisseria gonorrhoeae), including sexually transmitted and ophthalmia neonatorum;
(y) Haemophilus influenzae, invasive disease;
(z) Hantavirus infection (Sin Nombre virus);
(aa) Hemolytic uremic syndrome, postdiarrheal;
(bb) Hepatitis, viral, including but not limited to:
(i) Hepatitis A,
(ii) Hepatitis B (acute, chronic, and perinatal),
(iii) Hepatitis C,
(iv) Hepatitis D, and
(v) Hepatitis E;
(cc) Human immunodeficiency virus (HIV) infection, including acquired immune deficiency syndrome (AIDS) diagnosis;
(dd) Influenza virus infection:
(i) Associated with a hospitalization,
(ii) Associated with a death in a person under 18 years of age, or
(iii) Suspected or confirmed to be caused by a non-seasonal influenza strain;
(ee) Legionellosis (Legionella spp.), also known as Legionnaires' disease;
(ff) Leptospirosis (Leptospira spp.);
(gg) Listeriosis (Listeria spp., including Listeria monocytogenes);
(hh) Lyme disease (Borrelia burgdorferi);
(ii) Malaria (Plasmodium spp.);
(jj) Measles (Measles virus), also known as rubeola;
(kk) Meningitis (aseptic, bacterial, fungal, parasitic, protozoan, and viral);
(ll) Meningococcal disease (Neisseria meningitidis), invasive;
(mm) Mumps (Mumps virus);
(nn) Mycobacterial infections, including:
(i) Tuberculosis (Mycobacterium tuberculosis complex),
(ii) Leprosy (Mycobacterium leprae), also known as Hansen's Disease,
(iii) All other mycobacterial infections (Mycobacterium spp.);
(oo) Pertussis (Bordetella pertussis);
(pp) Plague (Yersinia pestis);
(qq) Poliomyelitis (Poliovirus), paralytic and nonparalytic;
(rr) Psittacosis (Chlamydophila psittaci), also known as ornithosis;
(ss) Q fever (Coxiella burnetii);
(tt) Rabies (Rabies virus), human and animal;
(uu) Relapsing fever (Borrelia spp.), tick-borne and louse-borne;
(vv) Rubella (Rubella virus), including congenital syndrome;
(ww) Salmonellosis (Salmonella spp.);
(xx) Severe acute respiratory syndrome, also known as SARS (SARS coronavirus or SARS-CoV);
(yy) Shigellosis (Shigella spp.);
(zz) Smallpox (Variola major and Variola minor);
(aaa) Spotted fever rickettsioses (Rickettsia spp.), including Rocky Mountain spotted fever (Rickettsia rickettsii);
(bbb) Streptococcal disease, invasive, due to:
(i) Streptococcus pneumoniae,
(ii) Group A Streptococcus (Streptococcus pyogenes), and
(iii) Group B Streptococcus (Streptococcus agalactiae);
(ccc) Syphilis (Treponema pallidum), all stages and congenital;
(ddd) Tetanus (Clostridium tetani);
(eee) Toxic shock syndrome, staphylococcal (Staphylococcus aureus) or streptococcal (Streptococcus pyogenes);
(fff) Transmissible spongiform encephalopathies (prion diseases), including Creutzfeldt-Jakob disease;
(ggg) Trichinellosis (Trichinella spp.);
(hhh) Tularemia (Francisella tularensis);
(iii) Typhoid (Salmonella typhi), cases and carriers;
(jjj) Vibriosis (Vibrio spp.), including Cholera (Vibrio cholerae);
(kkk) Viral hemorrhagic fevers, including but not limited to:
(i) Ebola fever (Ebolavirus spp.),
(ii) Lassa fever (Lassa virus), and
(iii) Marburg fever (Marburg virus);
(lll) Yellow fever (Yellow fever virus).
(3) Perinatally Transmissible Conditions Reportable by All Entities.
(a) Pregnancy is a reportable event for the following communicable diseases, and reporting is required even if the communicable disease was reported to public health prior to the pregnancy:
(i) Hepatitis B infection;
(ii) Hepatitis C infection;
(iii) HIV infection;
(iv) Listeriosis;
(v) Rubella;
(vi) Syphilis infection; and
(vii) Zika virus infection.
(4) Unusual Events Reportable by All Entities.
(a) Unusual events include one or more cases or suspect cases of a communicable disease, condition, or syndrome considered:
(i) Rare, unusual, or new to Utah;
(ii) Previously controlled or eradicated;
(iii) Caused by an unidentified or newly identified organism;

(iv) Exposure or infection that may indicate a bioterrorism event with potential transmission to the public; or

(v) Any other infection not explicitly identified in Subsection R386-702-3(2) that public health considers a public health hazard.

(5) Outbreaks, Epidemics, or Unusual Occurrences of Events Reportable by All Entities.

(a) Entities shall report two or more cases or suspect cases, with or without an identified organism, including but not limited to:

(i) Gastrointestinal illnesses;

(ii) Respiratory illnesses;

(iii) Meningitis or encephalitis;

(iv) Infections caused by antimicrobial resistant organisms;

(v) Illnesses with suspected foodborne or waterborne transmission;

(vi) Illnesses with suspected ongoing transmission in any facility;

(vii) Infections that may indicate a bioterrorism event; or

(viii) Any other infections not explicitly identified in Subsection R386-702-3(2) that public health considers a public health hazard.

(b) Entities shall report increases or shifts in pharmaceutical sales that may indicate changes in disease trends; or

(6) Laboratory Results Reportable by Electronic Reporters.

(a) In addition to laboratory results set forth in Subsection R386-702-3(2), the Department declares the following laboratory results to be reportable by entities reporting electronically.

(b) Entities reporting electronically shall include the following laboratory results or laboratory results that provide presumptive evidence of the following communicable diseases:

(i) Norovirus infection; and

(ii) Streptococcal disease, invasive due to all species.

(c) Entities reporting electronically shall include all laboratory results (positive, negative, equivocal, indeterminate) associated with the following tests or conditions:

(i) CD4+ T-Lymphocyte tests, regardless of known HIV status;

(ii) Chlamydia;

(iii) Clostridium difficile;

(iv) Cytomegalovirus (CMV), congenital (infants less than or equal to 12 months of age);

(v) Gonorrhea;

(vi) Hepatitis A;

(vii) Hepatitis B;

(viii) Hepatitis C, including viral loads;

(ix) HIV, including viral loads and confirmatory tests;

(x) Liver function tests, including ALT, AST, and bilirubin associated with a viral hepatitis case;

(xi) Lyme disease;

(xii) Syphilis;

(xiii) Tuberculosis; and

(xiv) Zika virus.

(d) Non-positive laboratory results reported for the events identified in Subsection R386-702-3(6)(c) will be used for the following purposes as authorized in Utah Health Code Subsections 26-1-30(2)(c), 26-1-30(2)(d), and 26-1-30(2)(f):

(i) To determine when a previously reported case becomes non-infectious;

(ii) To identify newly acquired infections through identification of a seroconversion window; or

(iii) To provide information critical for assignment of a case definition.

(e) Information associated with a non-positive laboratory result will be kept by the Department for a period of 18 months.

(i) At the end of the 18 month period, if the result has not been appended to an existing case, personal identifiers will be stripped and expunged from the result.

(ii) The de-identified result will be added to a de-identified, aggregate dataset.

(iii) The dataset will be kept for use by public health to analyze trends associated with testing patterns and case distribution, and identify and establish prevention and intervention efforts for at-risk populations.

(7) Authorized Reporting of Syndromes and Conditions.

(a) Reporting of encounters for the following syndromes and conditions is authorized by Chapter 26-23b, unless made mandatory by the declaration of a public health emergency:

(i) Respiratory illness, including but not limited to:

(A) Upper or lower respiratory tract infections,

(B) Difficulty breathing, or

(C) Adult respiratory distress syndrome;

(ii) Gastrointestinal illness, including but not limited to:

(A) Vomiting,

(B) Diarrhea, or

(C) Abdominal pain;

(iii) Influenza-like constitutional symptoms or signs;

(iv) Neurologic symptoms or signs indicating the possibility of meningitis, encephalitis, or unexplained acute encephalopathy or delirium;

(v) Rash illness;

(vi) Hemorrhagic illness;

(vii) Botulism-like syndrome;

(viii) Lymphadenitis;

(ix) Sepsis or unexplained shock;

(x) Febrile illness (illness with fever, chills or rigors);

(xi) Nontraumatic coma or sudden death; and

(xii) Other criteria specified by the Department as indicative of disease outbreaks or injurious exposures of uncertain origin.

(b) Reporting of encounters for syndromes and conditions not specified in SubsectionR386-702-3(7)(a) is also authorized by Chapter 26-23b, unless made mandatory by the declaration of a public health emergency.

(c) Information included in the reporting of the events identified in Subsection R386-702-3(7)(a) and R386-702-3(7)(b) will be used for the following purposes:

(i) To support early identification and ruling out of public health threats, disasters, outbreaks, suspected incidents, and acts of bioterrorism;

(ii) To assist in characterizing population groups at greatest risk for disease or injury;

(iii) To support assessment of the severity and magnitude of possible threats; or

(iv) To satisfy syndromic surveillance objectives of the Federal Centers for Medicaid and Medicare Meaningful Use incentive program.

(8) Reporting Exceptions

(a) A university or hospital that conducts research studies exempt from reporting AIDS and HIV infection under Section 26-6-3.5 shall seek written approval of reporting exemption from the Department institutional review board prior to the study commencement.

(b) The university or hospital shall submit the following to the HIV Epidemiologist within 30 days of Department institutional review board approval:

(i) A summary of the research protocol, including funding sources and justification for requiring anonymity; and

(ii) Written approval from the Department institutional review board.

(c) The university or hospital shall submit a report that includes all of the indicators specified in Subsection 26-6-3.5(4)(a) to the HIV Epidemiologist annually during an ongoing research study.

(d) The university or hospital shall submit a final report that includes all of the indicators specified in Subsection 26-6-

3.5(4)(a) to the HIV Epidemiologist within 30 days of the conclusion of the research study.

(e) Documents can be submitted to the HIV Epidemiologist by fax at (801) 538-9923 or by mail to 288 North 1460 West Salt Lake City, Utah 84116.

R386-702-4. Entities Required to Report.

(1) Section 26-6-6 lists those entities required to report cases or suspect cases of the reportable events set forth in Section R386-702-3. This includes:

(a) Health care providers, as defined in Section 78B-3-403;

(b) Health care facilities, as defined in Section 78B-3-403;

(c) Health care facilities operated by the federal government;

(d) Mental health facilities, as defined in Section 62A-15-602;

(e) Care facilities licensed through the Department of Human Services;

(f) Nursing care facilities and assisted living facilities, as defined in Section 26-21-2;

(g) Dispensaries;

(h) Clinics;

(i) Laboratories;

(j) Schools, as defined in Section 26-6-2;

(k) Childcare programs, as defined in Section 26-39-102; and

(l) Any individual with a knowledge of others who have a communicable disease.

(2) In addition, the following entities are required to report cases or suspect cases of the reportable events set forth in Section R386-702-3:

(a) Blood and plasma donation centers; and

(b) Correctional facilities

(3) When more than one entity is involved in the processing of a clinical specimen (receiving, forwarding, or analyzing); or the diagnosis, treatment, or care of a case or suspect case; all entities involved are required to report; even when diagnosis or testing is done outside of Utah.

(4) Health care entities may designate a single person or group of persons to report the events identified in SectionR386-702-3 to public health on behalf of their health care providers or medical laboratories, as long as reporting complies with all requirements in this rule.

R386-702-5. Mandatory Submission of Clinical Material.

(1) Laboratories shall submit clinical material from all cases identified with organisms listed in Subsection R386-702-5(3) below to the Utah Department of Health, Utah Public Health Laboratory (UPHL) within three working days of identification.

(a) Clinical material is defined as:

(i) A clinical isolate containing the organism for which submission of material is required; or

(ii) If an isolate is not available, material containing the organism for which submission of material is required, in the following order of preference:

(A) a patient specimen,

(B) nucleic acid, or

(C) other laboratory material.

(2) Laboratories submitting clinical material from cases identified with organisms designated by UPHL as potential bioterrorism (BT) agents shall first notify UPHL via telephone immediately.

(a) UPHL can be contacted during business hours at (801) 965-2400, or after hours at (801) 560-6586, of all BT agents that are being submitted.

(3) Organisms mandated for standard clinical submission include:

(a) Campylobacter species;

(b) Corynebacterium diphtheriae;

(c) Shiga toxin-producing Escherichia coli (STEC), including enrichment and/or MacConkey broths that tested positive by any method for Shiga toxin;

(d) Haemophilus influenzae, from normally sterile sites;

(e) Influenza A virus, unsubtypeable;

(f) Influenza virus (hospitalized cases only);

(g) Legionella species;

(h) Listeria monocytogenes;

(i) Measles (rubeola) virus;

(j) Mycobacterium tuberculosis complex;

(k) Neisseria meningitidis, from normally sterile sites;

(l) Salmonella species;

(m) Shigella species;

(n) Staphylococcus aureus that is resistant or intermediate resistant to vancomycin;

(o) Vibrio species;

(p) West Nile virus;

(q) Yersinia species;

(r) Zika virus; and

(s) Any organism implicated in an outbreak when instructed by authorized local or state health department personnel.

(4) Organisms mandated for BT clinical submission include:

(a) Bacillus anthracis;

(b) Brucella species;

(c) Clostridium botulinum;

(d) Francisella tularensis; and

(e) Yersinia pestis.

(5) Submission of clinical material does not replace the requirement for laboratories to report the event to public health as defined in Sections R386-702-6 and R386-702-7.

(6) For additional information on this process, contact UPHL at (801) 965-2400.

R386-702-6. Reporting Criteria.

(1) Manual Reporting

(a) Reporting Timeframes

(i) Entities shall report immediately reportable events by telephone as soon as possible, but no later than 24 hours after identification. Events designated as immediately reportable by the Department include cases and suspect cases of:

(A) Anthrax;

(B) Botulism, excluding infant botulism;

(C) Cholera;

(D) Diphtheria;

(E) Haemophilus influenzae, invasive disease;

(F) Hepatitis A;

(G) Influenza infection suspected or confirmed to be caused by a non-seasonal influenza strain;

(H) Measles;

(I) Meningococcal disease, invasive;

(J) Plague;

(K) Poliovirus, paralytic and nonparalytic;

(L) Rabies, human and animal;

(M) Rubella, excluding congenital syndrome;

(N) Severe acute respiratory syndrome (SARS);

(O) Smallpox;

(P) Staphylococcus aureus from any clinical specimen that is or intermediate resistant to vancomycin;

(Q) Transmissible spongiform encephalopathies (prion diseases), including Creutzfeldt-Jakob disease;

(R) Tuberculosis;

(S) Tularemia;

(T) Typhoid, cases and carriers;

(U) Viral hemorrhagic fevers;

(V) Yellow fever; or

(W) Any event described in Subsections R386-702-3(4) or R386-702-3(5).

(ii) Entities shall report all events in Subsections R386-702-3(2) and R386-702-3(3) not required to be reported immediately within three working days from the time of identification.

(b) Methods for Reporting

(i) Entities reporting manually shall send reports to either a local health department or the Department by phone, secured fax, secured email, or mail.

(ii) Contact information for the Department is as follows:

(A) Phone: (801) 538-6191 during business hours, or 888-EPI-UTAH (888-374-8824) after hours;

(B) Secured fax: (801) 538-9923;

(C) Secured email: reporting@utah.gov (contact the Department at (801) 538-6191 for information on this option); and

(D) Mail: 288 North 1460 West Salt Lake City, Utah 84116.

(iii) A confidential morbidity report form is available at: http://health.utah.gov/epi/reporting/.

(2) Electronic Reporting

(a) Reporting Timeframes

(i) All entities that report electronically must report laboratory results within 24 hours of finalization.

(A) Entities can choose to report in real-time (as each report is released) or batch reports.

(B) Entities reporting electronically must report preliminary positive results for the immediately reportable events specified in Subsection R386-702-6(1)(a)(i).

(b) Methods for Reporting

(i) The Department strongly encourages hospitals and laboratories with the capacity to report events electronically to the Department, in a manner approved by the Department.

(A) For additional information on this process, refer to https://health.utah.gov/phaccess/public/elr/ or contact the Division of Disease Control and Prevention Informatics Program by phone (801-538-6191) or email (elr@utah.gov).

(ii) Hospitals reporting electronically shall use HL7 2.5.1 message structure, and standard LOINC and SNOMED terminology in accordance with Meaningful Use regulations.

(iii) Laboratories reporting electronically shall use HL7 2.3.1 or 2.5.1 message structure, and appropriate LOINC codes designating the test performed.

(A) Laboratories reporting electronically shall submit all local vocabulary codes with translations to the Division of Disease Control and Prevention Informatics Program, if applicable.

(3) Syndromic Reporting

(a) Reporting Timeframes

(i) Entities reporting syndromes or conditions identified in Subsection R386-702-3(7) shall report as soon as practicable using a schedule approved by the Department.

(b) Methods for Reporting

(i) For information on reporting syndromic data, refer to https://health.utah.gov/phaccess/public/SS/ or contact the Division of Disease Control and Prevention Informatics Program by phone (801-538-6191) or email (elr@utah.gov).

R386-702-7. Required Information.

(1) Entities shall include as much of the following information as is known when reporting events specified in Subsections R386-702-3(2) through R386-702-3(6) to public health:

(a) Patient information:

(i) Full name;

(ii) Date of birth;

(iii) Address, including street address, city, state, and zip code;

(iv) Telephone number;

(v) Gender;

(vi) Race and ethnicity;

(vii) Date of onset;

(viii) Hospitalization status and date of admission; and

(ix) Pregnancy status and estimated due date.

(b) Diagnostic information:

(i) Name of the diagnostic facility;

(ii) Address, including street address, city, state, and zip code; of the diagnostic facility;

(iii) Telephone number of the diagnostic facility;

(iv) Full name of the ordering or diagnosing health care provider;

(v) Address, including street address, city, state, and zip code; of the ordering or diagnosing health care provider; and

(vi) Telephone number of the ordering or diagnosing health care provider.

(c) Reporter information:

(i) Full name of the person reporting;

(ii) Name of the facility reporting; and

(iii) Telephone number of the person or facility reporting.

(d) Laboratory testing information:

(i) Name of the laboratory performing the test;

(ii) The laboratory's name for, or description of, the test;

(iii) Specimen source;

(iv) Specimen collection date;

(v) Testing results;

(vi) Test reference range; and

(vii) Test status (e.g. preliminary, final, amended and/or corrected).

(2) Entities shall submit reports that are clearly legible and do not contain any internal codes or abbreviations to the Department.

(3) Entities shall reference http://health.utah.gov/epi/reporting, or contacting the Department at (801) 538-6191, for additional reporting specifications, including technical documents, reporting forms, and protocols.

(4) Full reporting of all relevant patient information is authorized when reporting events listed in Subsection R386-702-3(7) to public health.

(a) Entities shall include in reports at least the following information, if known:

(i) Name of the facility;

(ii) A patient identifier;

(iii) Date of visit;

(iv) Time of visit;

(v) Patient's age;

(vi) Patient's gender;

(vii) Zip code of patient's residence;

(viii) Chief complaint(s), reason for visit, and/or diagnosis; and

(ix) Whether the patient was admitted to the hospital.

R386-702-8. Confidentiality of Reports.

(1) All reports required by this rule are confidential and are not open to public inspection. All information collected pursuant to this rule shall not be released or made public, except as provided by Section 26-6-27. Penalties for violation of confidentiality are prescribed in Section 26-6-29.

(2) Nothing in this rule precludes the discussion of case information with an attending clinician or public health workers.

(3) Good Samaritans

(a) The Department or local health department shall disclose communicable disease-related information regarding the person who was assisted to the medical provider of a Good Samaritan when that medical provider submits a request to the Department or local health department. The request must include:

(i) Information regarding the occurrence of the accident, fire, or other life-threatening emergency;

(ii) A description of the exposure risk to the Good Samaritan; and

(iii) Contact information for the Good Samaritan and their medical provider.

(b) The Department or local health department will ensure that the disclosed information:

(i) Includes enough detail to allow for appropriate education and follow-up to the Good Samaritan; and

(ii) Ensures confidentiality is maintained for the person who was aided.

(c) No identifying information will be shared with the Good Samaritan or their medical provider regarding the person who was assisted. The Good Samaritan shall receive written information warning them that information regarding the person who was assisted is protected by state law.

R386-702-9. Non-Compliance with Reporting Regulations.

(1) Any person who violates any provision of Section R386-702 may be assessed a penalty as provided in Section 26-23-6.

(a) Willful non-compliance may result in the Department working with other agencies to incur penalties which may include loss of accreditation or licensure.

(2) Records maintained by reporting entities are subject to review by Department personnel to assure the completeness and accuracy of reporting.

(3) If public health conducts a surveillance project, such as assessing the completeness of case finding or assessing another measure of data quality, the Department may, at its discretion, waive any penalties for participating entities if cases are found that were not originally reported for whatever reason.

R386-702-10. Information Necessary for Public Health Investigation and Surveillance.

(1) Reporting entities shall provide the Department or local health department with any records or other materials requested by public health that are necessary to conduct a thorough investigation.

(a) This includes, but is not limited to, medical records, additional laboratory testing results, treatment and vaccination history, clinical material, or contact information for cases, suspect cases, or persons potentially exposed.

(b) The Department or local health department shall be granted on-site access to a facility, when such access is critical to a public health investigation.

R386-702-11. General Measures for the Control of Communicable Diseases.

(1) The local health department shall maintain all reportable disease records as needed to enforce Chapter 6 of the Health Code and this rule, or as requested by the Utah Department of Health.

(2) General Control Measures for Reportable Diseases.

(a) The local health department shall, when an unusual or rare disease occurs in any part of the state or when any disease becomes so prevalent as to endanger the state as a whole, contact the Bureau of Epidemiology, Utah Department of Health for assistance, and shall cooperate with the representatives of the Utah Department of Health.

(b) The local health department shall investigate and control the causes of epidemic, infectious, communicable, and other disease affecting the public health. The local health department shall also provide for the detection, reporting, prevention, and control of communicable, infectious, and acute diseases that are dangerous or important or that may affect the public health. The local health department may require physical examination and measures to be performed as necessary to protect the health of others.

(c) If, in the opinion of the local health officer it is necessary or advisable to protect the public's health that any person shall be kept from contact with the public, the local health officer shall establish, maintain and enforce involuntary treatment, isolation and quarantine as provided by Section 26-6-4. Control measures shall be specific to the known or suspected disease agent. Guidance is available from the Bureau of Epidemiology, Utah Department of Health or official reference listed in R386-702-12.

(3) Prevention of the Spread of Disease From a Case.

The local health department shall take action and measures as may be necessary within the provisions of Section 26-6-4; Title 26, Chapter 6b; and this rule, to prevent the spread of any communicable disease, infectious agent, or any other condition which poses a public health hazard. Action shall be initiated upon discovery of a case or upon receipt of notification or report of any disease.

(4) Prevention of the Spread of Disease or Other Public Health Hazard.

A case, suspected case, carrier, contact, other person, or entity (e.g. facility, hotel, organization) shall, upon request of a public health authority, promptly cooperate during:

(a) An investigation of the circumstances or cause of a case, suspected case, outbreak, or suspected outbreak.

(b) The carrying out of measures for prevention, suppression, and control of a public health hazard, including, but not limited to, procedures of restriction, isolation, and quarantine.

(5) Public Food Handlers.

A person known to be infected with a communicable disease that can be transmitted by food or drink products, or who is suspected of being infected with such a disease, may not engage in the commercial handling of food or drink products, or be employed on any premises handling those types of products, unless those products are packaged off-site and remain in a closed container until purchased for consumption, until the person is determined by the local health department to be free of communicable disease, or incapable of transmitting the infection.

(6) Communicable Diseases in Places Where Food or Drink Products are Handled or Processed.

If a case, carrier, or suspected case of a disease that can be conveyed by food or drink products is found at any place where food or drink products are handled or offered for sale, or if a disease is found or suspected to have been transmitted by these food or drink products, the local health department may immediately prohibit the sale, or removal of drink and all other food products from the premises. Sale or distribution of food or drink products from the premises may be resumed when measures have been taken to eliminate the threat to health from the product and its processing as prescribed by R392-100.

(7) Request for State Assistance.

If a local health department finds it is not able to completely comply with this rule, the local health officer or his representative shall request the assistance of the Utah Department of Health. In such circumstances, the local health department shall provide all required information to the Bureau of Epidemiology. If the local health officer fails to comply with the provisions of this rule, the Utah Department of Health shall take action necessary to enforce this rule.

(8) Approved Laboratories.

Laboratory analyses that are necessary to identify the causative agents of reportable diseases or to determine adequacy of treatment of patients with a disease shall be ordered by the physician or other health care provider to be performed in or referred to a laboratory holding a valid certificate under the Clinical Laboratory Improvement Amendments of 1988.

R386-702-12. Special Measures for Control of Rabies.

(1) Rationale of Treatment.

A physician must evaluate individually each exposure to possible rabies infection. The physician shall also consult with local or state public health officials if questions arise about the need for rabies prophylaxis.

(2) Management of Biting Animals.

(a) A healthy dog, cat, or ferret that bites a person shall be confined and observed at least daily for ten days from the date of bite, regardless of vaccination status, as specified by local animal control ordinances. It is recommended that rabies vaccine not be administered during the observation period. Such animals shall be evaluated by a veterinarian at the first sign of illness during confinement. A veterinarian or animal control officer shall immediately report any illness in the animal to the local health department. If signs suggestive of rabies develop, a veterinarian or animal control officer shall direct that the animal be euthanized, its head removed, and the head shipped under refrigeration, not frozen, for examination of the brain by a laboratory approved by the Utah Department of Health.

(b) If the dog, cat, or ferret shows no signs of rabies or illness during the ten day period, the veterinarian or animal control officer shall direct that the unvaccinated animal be vaccinated against rabies at the owner's expense before release to the owner. If a veterinarian is not available, the animal may be released, but the owner shall have the animal vaccinated within 72 hours of release. If the dog, cat, or ferret was appropriately vaccinated against rabies before the incident, the animal may be released from confinement after the 10-day observation period with no further restrictions.

(c) Any stray or unwanted dog, cat, or ferret that bites a person may be euthanized immediately by a veterinarian or animal control officer, if permitted by local ordinance, and the head submitted, as described in R386-702-6(2)(a), for rabies examination. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(d) Wild animals include raccoons, skunks, coyotes, foxes, bats, the offspring of wild animals crossbred to domestic dogs and cats, and any carnivorous animal other than a domestic dog, cat, or ferret.

(e) Signs of rabies in wild animals cannot be interpreted reliably. If a wild animal bites or scratches a person, the person or attending medical personnel shall notify an animal control or law enforcement officer. A veterinarian, animal control officer or representative of the Division of Wildlife Resources shall kill the animal at once, without unnecessary damage to the head, and submit the brain, as described in R386-702-6(2)(a), for examination for evidence of rabies. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(f) Rabbits, opossums, squirrels, chipmunks, rats, and mice are rarely infected and their bites rarely, if ever, call for rabies prophylaxis or testing. Unusual exposures to any animal should be reported to the local health department or the Bureau of Epidemiology, Utah Department of Health.

(g) When rare, valuable, captive wild animals maintained in zoological parks approved by the United States Department of Agriculture or research institutions, as defined by Section 26-26-1, bite or scratch a human, the Bureau of Epidemiology, Utah Department of Health shall be notified. The provisions of subsection R386-702-6(2)(e) may be waived by the Bureau of Epidemiology, Utah Department of Health if zoological park operators or research institution managers can demonstrate that the following rabies control measures are established:

(i) Employees who work with the animal have received preexposure rabies immunization.

(ii) The person bitten by the animal voluntarily agrees to accept postexposure rabies immunization provided by the zoological park or research facility.

(iii) The director of the zoological park or research facility shall direct that the biting animal be held in complete quarantine for a minimum of four months for dogs and cats, and six months for ferrets. Quarantine requires that the animal be prohibited from direct contact with other animals or humans.

(h) Any animal bitten or scratched by a wild, carnivorous animal or a bat that is not available for testing shall be regarded as having been exposed to rabies. The animal shall be placed in a strict quarantine for four months for dogs and cats, or six months for ferrets.

(i) For maximum protection of the public health, unvaccinated dogs, cats, and ferrets bitten or scratched by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer. If the owner is unwilling to have the animal euthanized, the local health officer shall order that the animal be held in strict isolation in a municipal or county animal shelter or a veterinary medical facility approved by the local health department, at the owner's expense, for at least four months for dogs and cats, and six months for ferrets. The animal shall be vaccinated one month before being released. If any illness suggestive of rabies develops in the animal, the veterinarian or animal control officer shall immediately report the illness to the local health department and the veterinarian or animal control officer shall direct that the animal be euthanized and the head shall be handled as described in subsection R386-702-6(2)(a).

(j) Dogs, cats, and ferrets that are currently vaccinated and are bitten by rabid animals, shall be revaccinated immediately by a veterinarian and confined and observed by the animal's owner for 45 days. If any illness suggestive of rabies develops in the animal, the owner shall report immediately to the local health department and the animal shall be euthanized by a veterinarian or animal control officer and the head shall be handled as described in subsection R386-702-6(2)(a).

(k) Livestock exposed to a rabid animal and currently vaccinated with a vaccine approved by the United States Department of Agriculture for that species shall be revaccinated immediately by a veterinarian and observed by the owner for 45 days. Unvaccinated livestock shall be slaughtered immediately. If the owner is unwilling to have the animal slaughtered, the animal shall be kept under close observation by the owner for six months.

(l) Unvaccinated animals other than dogs, cats, ferrets, and livestock bitten by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer.

(3) Testing Fees at Utah Public Health Laboratory (UPHL).

(a) Animals being submitted to UPHL for rabies testing must follow criteria defined in The Compendium of Animal Rabies Prevention and Control to be eligible for testing without a fee. Testing of animals that fit this criteria will be eligible for a waived fee for testing. Testing of animals that do not meet this criteria will incur a testing fee as set forth by UPHL.

(b) The following situations will not incur a rabies testing fee if testing is ordered for them through UPHL:

(i) Any bat in an instance where a person or animal has had an exposure, or reasonable probability of exposure, including, but not limited to: known bat bites, exposure to bat saliva, a bat found in a room with a sleeping person or unattended child, or a bat found near a child or mentally impaired or intoxicated person.

(ii) Dogs, cats, or ferrets, regardless of rabies vaccination status, if signs suggestive of rabies are documented in them.

(iii) Wild mammals and hybrids that expose persons, pets, or livestock (e.g., skunks, foxes, coyotes, and raccoons) may be tested.

(iv) Livestock may be tested if signs suggestive of rabies are documented.

(v) UDOH Bureau of Epidemiology staff are available to discuss additional situations that may warrant testing at (801) 538-6191.

(c) The following situations will incur a $95 testing fee if testing is ordered for them through UPHL:

(i) Any stray with unknown or undocumented vaccination history that exposes a person, if signs suggestive of rabies are not documented, or if the animal has not been confined and observed for at least 10 days.

(ii) Dogs, cats, and ferrets: currently vaccinated animals that expose a person, if signs suggestive of rabies are not documented, or animals have not been confined and observed for at least 10 days.

(iii) Regardless of rabies vaccination status, a healthy dog, cat, or ferret that has not exposed a person.

(iv) Small rodents (e.g., rats, mice, squirrels, chipmunks, voles, or moles) and lagomorphs (rabbits and hares).

(v) Incomplete paperwork accompanying the sample will also result in a fee for testing; a thorough description of the situation must be included with each sample submission.

(vi) UDOH Bureau of Epidemiology staff are available to discuss additional situations that may not warrant testing at (801) 538-6191.

(d) If the submitting party feels they are charged inappropriately for rabies testing, they may send a letter describing the situation and requesting a waiver for fees to the: Utah Department of Health, Bureau of Epidemiology, P.O. Box 142104, Salt Lake City, UT 84114, attention: Zoonotic Diseases Epidemiologist. Information may be submitted electronically via email to: epi@utah.gov, with a note in the subject line "Attention: Zoonotic Diseases Epidemiologist".

(i) The submitting party has 30 days from receipt of the testing fee invoice to file an appeal. The letter must include copies of the original paperwork that was submitted, and a copy of the invoice received, for a waiver to be considered.

(ii) UDOH and UPHL have 30 days to review information after receipt of an appeal request to make an official decision and notify the submitter.

(iii) UDOH Bureau of Epidemiology staff are available to discuss questions about testing fees and the appeal process at (801) 538-6191.

(4) Measures for Standardized Rabies Control Practices.

(a) Humans requiring either pre- or post-exposure rabies prophylaxis shall be treated in accordance with the recommendations of the U.S. Public Health Service Immunization Practices Advisory Committee, as adopted and incorporated by reference in R386-702-12(2). A copy of the recommendations shall be made available to licensed medical personnel, upon request to the Bureau of Epidemiology, Utah Department of Health.

(b) A physician or other health care provider that administers rabies vaccine shall immediately report all serious systemic neuroparalytic or anaphylactic reactions to rabies vaccine to the Bureau of Epidemiology, Utah Department of Health, using the process described in R386-702-4.

(c) The Compendium of Animal Rabies Prevention and Control, as adopted and incorporated by reference in R386-702-12(3), is the reference document for animal vaccine use.

(d) A county, city, town, or other political subdivision that requires licensure of animals shall also require rabies vaccination as a prerequisite to obtaining a license.

(e) Animal rabies vaccinations are valid only if performed by or under the direction of a licensed veterinarian in accordance with the Compendium of Animal Rabies Prevention and Control.

(f) All agencies and veterinarians administering vaccine shall document each vaccination on the National Association of State Public Health Veterinarians (NASPHV) form number 51, Rabies Vaccination Certificate, which can be obtained from vaccine manufacturers. The agency or veterinarian shall provide a copy of the report to the animal's owner. Computer-generated forms containing the same information are also acceptable.

(g) Animal rabies vaccines may be sold or otherwise provided only to licensed veterinarians or veterinary biologic supply firms. Animal rabies vaccine may be purchased by the Utah Department of Health and the Utah Department of Agriculture.

(5) Measures to Prevent or Control Rabies Outbreaks.

(a) The most important single factor in preventing human rabies is the maintenance of high levels of immunity in the pet dog, cat, and ferret populations through vaccination.

(i) All dogs, cats, and ferrets in Utah should be immunized against rabies by a licensed veterinarian; and

(ii) Local governments should establish effective programs to ensure vaccination of all dogs, cats, and ferrets and to remove strays and unwanted animals.

(b) If the Utah Department of Health determines that a rabies outbreak is present in an area of the state, the Utah Department of Health may require that:

(i) all dogs, cats, and ferrets in that area and adjacent areas be vaccinated or revaccinated against rabies as appropriate for each animal's age;

(ii) any such animal be kept under the control of its owner at all times until the Utah Department of Health declares the outbreak to be resolved;

(iii) an owner who does not have an animal vaccinated or revaccinated surrender the animal for confinement and possible destruction; and

(iv) such animals found at-large be confined and possibly destroyed.

R386-702-13. Special Measures for Control of Typhoid.

(1) Because typhoid control measures depend largely on sanitary precautions and other health measures designed to protect the public, the local health department shall investigate each case of typhoid and strictly manage the infected individual according to the following outline:

(2) Cases: Standard precautions are required during hospitalization. Use contact precautions for diapered or incontinent patients for the duration of illness. Hospital care is desirable during acute illness. Release of the patient from supervision by the local health department shall be based on three or more negative cultures of feces (and of urine in patients with schistosomiasis) taken at least 24 hours apart. Cultures must have been taken at least 48 hours after antibiotic therapy has ended and not earlier than one month after onset of illness as specified in R386-702-7(6). If any of these cultures is positive, repeat cultures at intervals of one month during the 12-month period following onset until at least three consecutive negative cultures are obtained as specified in R386-702-7(6). The patient shall be restricted from food handling, child care, and from providing patient care during the period of supervision by the local health department.

(3) Contacts: Administration of typhoid vaccine is recommended for all household members of known typhoid carriers. Household and close contacts of a carrier shall be restricted from food handling, child care, and patient care until two consecutive negative stool specimens, taken at least 24 hours apart, are submitted, or when approval is granted by the local health officer according to local jurisdiction.

(4) Carriers: If a laboratory or physician identifies a carrier of typhoid, the attending physician shall immediately report the details of the case by telephone to the local health department or the Bureau of Epidemiology, Utah Department of Health using the process described in R386-702-4. Each infected individual shall submit to the supervision of the local

health department. Carriers are prohibited from food handling, child care, and patient care until released in accordance with R386-702-7(4)(a) or R386-702-7(4)(b). All reports and orders of supervision shall be kept confidential and may be released only as allowed by Subsection 26-6-27(2)(c).

(a) Convalescent Carriers: Any person who harbors typhoid bacilli for three but less than 12 months after onset is defined as a convalescent carrier. Release from occupational and food handling restrictions may be granted at any time from three to 12 months after onset, as specified in R386-702-7(6).

(b) Chronic Carriers: Any person who continues to excrete typhoid bacilli for more than 12 months after onset of typhoid is a chronic carrier. Any person who gives no history of having had typhoid or who had the disease more than one year previously, and whose feces or urine are found to contain typhoid bacilli is also a chronic carrier.

(c) Other Carriers: If typhoid bacilli are isolated from surgically removed tissues, organs, including the gallbladder or kidney, or from draining lesions such as osteomyelitis, the attending physician shall report the case to the local health department or the Bureau of Epidemiology, Utah Department of Health. If the person continues to excrete typhoid bacilli for more than 12 months, he is a chronic carrier and may be released after satisfying the criteria for chronic carriers in R386-702-7(6).

(5) Carrier Restrictions and Supervision: The local health department shall report all typhoid carriers to the Bureau of Epidemiology, and shall:

(a) Require the necessary laboratory tests for release;

(b) Issue written instructions to the carrier;

(c) Supervise the carrier.

(6) Requirements for Release of Convalescent and Chronic Carriers: The local health officer or his representative may release a convalescent or chronic carrier from occupational and food handling restrictions only if at least one of the following conditions is satisfied:

(a) For carriers without schistosomiasis, three consecutive negative cultures obtained from fecal specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(b) for carriers with schistosomiasis, three consecutive negative cultures obtained from both fecal and urine specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(c) the local health officer or his representative determine that additional treatment such as cholecystectomy or nephrectomy has terminated the carrier state; or

(d) the local health officer or his representative determines the carrier no longer presents a risk to public health according to the evaluation of other factors.

R386-702-14. Special Measures for the Control of Ophthalmia Neonatorum.

Every physician or midwife practicing obstetrics or midwifery shall, within three hours of the birth of a child, instill or cause to be instilled in each eye of such newborn one percent silver nitrate solution contained in wax ampules, or tetracycline ophthalmic preparations or erythromycin ophthalmic preparations, as these are the only antibiotics of currently proven efficacy in preventing development of ophthalmia neonatorum. The value of irrigation of the eyes with normal saline or distilled water is unknown and not recommended.

R386-702-15. Special Measures for the Control of HIV/AIDS.

(1) Partner identification and notification:

(a) If an individual is tested and found to have an HIV infection, the Department and/or local health department shall provide partner services, linkage-to-care activities, and promote retention to HIV care.

(2) Definitions:

(a) "Partner" is defined as any individual, including a spouse, who has shared needles, syringes, or drug paraphernalia or who has had sexual contact with an HIV infected individual.

(b) "Spouse" is defined as any individual who is the marriage partner of that person at any time within the ten-year period prior to the diagnosis of HIV infection.

(c) "Linkage to care" is defined by a reported CD4+ T-Lymphocyte test and/or HIV viral load determination within three months of HIV positive diagnosis.

(d) "Retention to care" is defined by a reported CD4+ T-Lymphocyte test or HIV viral load determination twice within a 12-month period and at least three months apart.

(3) Partner services include:

(a) Confidential partner notification within 30 days of receiving a positive HIV result;

(b) Prevention counseling;

(c) Testing for HIV;

(d) Providing recommendations for testing for other sexually transmitted diseases;

(e) Providing recommendations for hepatitis screening and vaccination;

(f) Treatment or linkage to medical care within three months of HIV diagnosis; and

(g) Linkage or referral to other prevention services and support.

R386-702-16. Special Measures to Prevent Perinatal and Person-to-Person Transmission of Hepatitis B Infection.

(1) A licensed healthcare provider who provides prenatal care shall routinely test each pregnant woman for hepatitis B surface antigen (HBsAg) at an early prenatal care visit. The provisions of this section do not apply if the pregnant woman, after being informed of the possible consequences, objects to the test on the basis of religious or personal beliefs.

(2) The licensed healthcare provider who provides prenatal care shall repeat the HBsAg test during late pregnancy for those women who tested negative for HBsAg during early pregnancy, but who are at high risk based on:

(a) evidence of clinical hepatitis during pregnancy;

(b) injection drug use;

(c) occurrence during pregnancy or a history of a sexually transmitted disease;

(d) occurrence of hepatitis B in a household or close family contact; or

(e) the judgment of the healthcare provider.

(3) In addition to other reporting required by this rule, each positive HBsAg result detected in a pregnant woman shall be reported to the local health department or the Department, as specified in Section 26-6-6. That report shall indicate that the woman was pregnant at time of testing if that information is available to the reporting entity.

(4) A licensed healthcare provider who provides prenatal care shall document a woman's HBsAg test results, or the basis of the objection to the test, in the medical record for that patient.

(5) Every hospital and birthing facility shall develop a policy to assure that:

(a) when a pregnant woman is admitted for delivery, or for monitoring of pregnancy status, the result from a test for HBsAg performed on that woman during that pregnancy is available for review and documented in the hospital record;

(b) when a pregnant woman is admitted for delivery, if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg as soon as possible, but

before discharge from the hospital or birthing facility;

(c) if a pregnant woman who has not had prenatal care during that pregnancy is admitted for monitoring of pregnancy status only, and if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg status before discharge from the hospital or birthing facility;

(d) positive HBsAg results identified by testing performed or documented during the hospital stay are reported as specified in this rule;

(e) infants born to HBsAg positive mothers receive hepatitis B immune globulin (HBIG) and hepatitis B vaccine, administered at separate injection sites, within 12 hours of birth;

(f) infants born to mothers whose HBsAg status is unknown receive hepatitis B vaccine within 12 hours of birth, and if the infant is born preterm with birth weight less than 2,000 grams, that infant also receives HBIG within 12 hours; and

(g) if at the time of birth the mother's HBsAg status is unknown and the HBsAg test result is later determined to be positive, that infant receives HBIG as soon as possible but within 7 days of birth.

(h) hepatitis B immune globulin (HBIG) administration and birth dose hepatitis B vaccine status of infants born to mothers who are HBsAg-positive are reported within 24 hours of delivery to the local health department and Utah Department of Health Immunization Program at (801) 538-9450.

(6) Local health departments shall perform the following activities or assure that they are performed:

(a) All females between the ages of 12 and 50 years at the time an HBsAg positive test result is reported will be screened for pregnancy status within one week of receipt of that lab result.

(b) Infants born to HBsAg positive mothers complete the hepatitis B vaccine series as specified in in the most current version of "The Red Book" as cited in R386-702-13 (4).

(c) Children born to HBsAg positive mothers are tested for HBsAg and antibody against hepatitis B surface antigen (anti-HBs) at 9 to 12 months of age (testing is done at least one month after the final dose of hepatitis B vaccine series is administered, and no earlier than 9 months of age) to monitor the success of therapy and identify cases of perinatal hepatitis B infection.

(i) Children who test negative for HBsAg and do not demonstrate serological evidence of immunity against hepatitis B when tested as described in (c) receive three additional vaccine doses and are retested as specified in the most current version of "The Red Book" as cited in R386-702-13 (4).

(d) HBsAg positive mothers are advised regarding how to reduce their risk of transmitting hepatitis B to others.

(e) Household members and sex partners of HBsAg positive mothers are evaluated to determine susceptibility to hepatitis B infection and if determined to be susceptible, are offered or advised to obtain vaccination against hepatitis B.

(i) All identified acute hepatitis B cases shall be investigated by the local health department, and identified household and sexual contacts shall be advised to obtain vaccination against hepatitis B.

(7) The provisions of subsections (5) and (6) do not apply if the pregnant woman or the child's guardian, after being informed of the possible consequences, objects to any of the required procedures on the basis of religious or moral beliefs. The hospital or birthing facility shall document the basis of the objection.

(8) Prevention of transmission by individuals with chronic hepatitis B infection.

(a) The Department defines a chronic hepatitis B case as a person that is HBsAg positive, total antibody against hepatitis B core antigen (anti-HBc) positive (if performed) and IgM anti-HBc negative.

(b) An individual with chronic hepatitis B infection shall be advised regarding how to reduce the risk that the individual will transmit hepatitis B to others.

(c) Household members and sex partners of individuals with chronic hepatitis B infection shall be evaluated to determine susceptibility to hepatitis B infection, and if determined to be susceptible, shall be offered or advised to obtain vaccination against Hepatitis B.

R386-702-17. Public Health Emergency.

(1) Declaration of Emergency: With the Governor's and Executive Director's or in the absence of the Executive Director, his designee's, concurrence, the Department or a local health department may declare a public health emergency by issuing an order mandating reporting emergency illnesses or health conditions specified in sections R386-702-3 for a reasonable time.

(2) For purposes of an order issued under this section and for the duration of the public health emergency, the following definitions apply.

(a) "emergency center" means:

(i) a health care facility licensed under the provisions of Chapter 26-21 that operates an emergency department; or

(ii) a clinic that provides emergency or urgent health care to an average of 20 or more persons daily.

(b) "encounter" means an instance of an individual presenting at the emergency center who satisfies the criteria in section R386-702-3(2); and

(c) "diagnostic information" means an emergency center's records of individuals who present for emergency or urgent treatment, including the reason for the visit, chief complaint, results of diagnostic tests, presenting diagnosis, and final diagnosis, including diagnostic codes.

(3) Reporting Encounters: The Department shall designate the fewest number of emergency centers as is practicable to obtain the necessary data to respond to the emergency.

(a) Designated emergency centers shall report using the process described in R386-702-4.

(b) An emergency center designated by the Department shall report the encounters to the Department by:

(i) allowing Department representatives or agents, including local health department representatives, to review its diagnostic information to identify encounters during the previous day; or

(ii) reviewing its diagnostic information on encounters during the previous day and reporting all encounters by 9:00 a.m. the following day, or

(iii) identifying encounters and submitting that information electronically to the Department, using a computerized analysis method, and reporting mechanism and schedule approved by the Department; or

(iv) by other arrangement approved by the Department.

(4) For purposes of epidemiological and statistical analysis, the emergency center shall report on encounters during the public health emergency that do not meet the definition for a reportable emergency illness or health condition. The report shall be made using the process described in R386-702-4 and shall include the following information for each such encounter:

(a) facility name;

(b) date of visit;

(c) time of visit;

(d) patient's age;

(e) patient's sex;

(f) patient's zip code for patient's residence.

(5) If either the Department or a local health department collects identifying health information on an individual who is the subject of a report made mandatory under this section, it shall destroy that identifying information upon the earlier of its determination that the information is no longer necessary to

carry out an investigation under this section or 180 days after the information was collected. However, the Department and local health departments shall retain identifiable information gathered under other sections of this rule or other legal authority.

(6) Reporting on encounters during the public health emergency does not relieve a reporting entity of its responsibility to report under other sections of this rule or other legal authority.

R386-702-18. Official References.

All treatment and management of individuals and animals who have or are suspected of having a communicable or infectious disease that must be reported pursuant to this rule shall comply with the following documents, which are adopted and incorporated by reference:

(1) American Public Health Association. "Control of Communicable Diseases Manual". 20th ed., Heymann, David L., editor, 2015.

(2) Centers for Disease Control and Prevention. "Human Rabies Prevention---United States, 2008: Recommendations of the Advisory Committee on Immunization Practices." Morbidity and Mortality Weekly Report. 57 (RR03) (2008):1-26, 28.

(3) National Association of State Public Health Veterinarians Committee. "Compendium of Animal Rabies Prevention and Control, 2016." Nasphv.org. National Association of State Public Health Veterinarians, 18 October 2016. Web. http://nasphv.org/Documents/NASPHVRabiesCompendium.pdf

(4) American Academy of Pediatrics. "Red Book: 2012 Report of the Committee on Infectious Diseases" 30th Edition. Elk Grove Village, IL, American Academy of Pediatrics; 2015.

(5) National Association of State Public Health Veterinarians Animal Contact Compendium Committee 2013. "Compendium of Measures to Prevent Disease Associated with Animals in Public Settings, 2013." Journal of the American Veterinary Medicine Association 243 (2013): 1270-288.

KEY: communicable diseases, quarantines, rabies, rules and procedures

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Notice of Continuation April 15, 2016	**26-6-3**
	26-23b

R406. Health, Family Health and Preparedness, WIC Services.
R406-100. Special Supplemental Nutrition Program for Women, Infants and Children.
R406-100-1. Incorporations by Reference.

(1) The State WIC Office adopts the standards of the Special Supplemental Nutrition Program for Women, Infants and Children provided in 7 CFR 246, 01/01/2012 edition, which is incorporated by reference.

(2) The State WIC Office incorporates by reference the Fiscal Year 2013 Utah Women, Infants, and Children (WIC) State Plan of Program Operations and Administration including the Utah WIC Policy and Procedures Manual effective October 1, 2012.

R406-100-2. Processing Time Frames.

(1) The standards of 7 CFR 246.7(f)(2) are adopted and incorporated by reference with the following exceptions:

(a) Extensions of the processing time frames may be granted in the following circumstances:

(i) Clinics operating only 2 days a month or less.

(ii) In emergency situations when, for example, an employer in a particular geographic area engages in mass lay-offs of personnel.

(iii) In cases where there is difficulty in appointment scheduling, a time variation of 30 days may be added to or subtracted from the certification intervals for all except participants who are categorically ineligible.

R406-100-3. Uncertified Waiting List.

(1) The standards of 7 CFR 246.7(f)(1) are adopted and incorporated by reference with the following exceptions:

(a) Uncertified Waiting List means a log of names of individuals who have applied for WIC benefits either by phone or walk in, but who have not been determined WIC eligible.

(b) When a clinic begins a priority system, the clinic must begin maintaining waiting lists by priority of individuals who visit or telephone the clinic to request program benefits. If screening appointments are not being taken, the clinic shall use the Uncertified Waiting List log. Applicants are to be placed on the highest potential priority of the uncertified log in chronological order by application date.

(c) For clinic convenience, there are three uncertified priority logs into which all potential applicants may be placed prior to certification. They are Priority I, III, and VI. Priorities II, IV, and V cannot be determined until after the certification process has been completed.

R406-100-4. Certified Waiting List.

The standards of 7 CFR 246.7(e)(1) are adopted and incorporated by reference with the following exceptions:

(1) Certified Waiting List means chronological files of those persons who are determined by the State WIC Office to be WIC eligible, are assigned a priority, and are waiting for funds to become available so they can receive benefits.

(a) After applicants have been determined to be eligible through screening, and are certified, they are placed on the Certified Waiting List according to their highest potential priority. These files are to be placed by priority in chronological order by certification date.

(b) As case load decreases in each clinic, the clinic will send vouchering appointment letters to applicants who are certified and waiting. All individuals in the highest priorities must be served before individuals of a lower priority are served.

(c) All individuals within a priority must be served according to chronological date of their placement on the Waiting List.

R406-100-5. Residence.

The standards of 7 CFR 246.7(b)(2) are adopted and incorporated by reference with the following exceptions:

Each applicant must state that the address given to the clinic is the applicant's current address. The clinic's staff then determines that the address given is within the area served by the agency and within the jurisdiction of the state.

If the applicant is a member of a special population such as homeless individuals or residents of border towns with interstate agreements, these individuals may be served by designated clinics regardless of residency status.

If an applicant applies for services at a clinic and the address given is not within the county or group of counties served from this clinic, the applicant is eligible to be served from this clinic only after the clinic requests and has received approval from the State WIC Office to serve this individual or family.

R406-100-6. Inadequate Income.

The standards of 7 CFR 246.7(d) are adopted and incorporated by reference with the following exceptions:

(1) Each applicant must submit income verification to the clinic regarding the family's income. This is usually determined by bringing in proof of the previous month's gross income, or proof of the yearly gross income.

(2) The clinic staff shall determine whether the gross income given is at or below 185% of the Income Poverty Level established by the federal government.

R406-100-7. Retention of WIC Files.

The standards of 7 CFR 246.25(a)(2), (3) are adopted and incorporated by reference with the following exceptions:

WIC files shall be maintained for federal or state auditors review for the following retention periods:

(1) Files of women participants, infants and children shall be retained for a minimum four years following the end of the fiscal year that their files were closed.

All other records may be destroyed after four years.

R406-100-8. Vendor Monitoring.

The standards of 7 CFR 246.12(i) are adopted and incorporated by reference with the following exceptions:

(1) The State WIC Office may conduct vendor monitoring on all high risk vendors.

(2) The State WIC Office shall determine high risk vendors based on the following criteria:

(a) vendor's redeemed prices are higher than price list;

(b) unusually large percentage of high priced food instruments by vendor;

(c) participant complaints or complaints from the clinic or other vendors;

(d) food instrument redemption errors;

(e) accumulation of five or more sanctioning points as listed in each vendor's signed contract under the heading Vendor Sanctions;

(f) vendor out of compliance during monitoring visit/redemption analysis;

(g) complaints involving possible overcharging, fraud or any violation that would cause disqualification for food stamps.

(3) The United States Department of Agriculture, Food and Nutrition Service, Instruction 806-4, which clarifies 7 CFR 246.12(f), and states that federal agencies have immunity from state claims or review. The Department of Health will not conduct on-site monitoring reviews of commissaries or require claims to be paid.

(4) Copies of Instruction 806-4 are available at the State WIC Office.

KEY: nutrition, women, children, infants
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Notice of Continuation January 30, 2017

R406. Health, Family Health and Preparedness, WIC Services.
R406-200. Program Overview.
R406-200-1. Introduction and Background.

(1) Under the Child Nutrition Act of 1966 (42 U.S.C. Sec. 1786 et seq.), as amended, Congress has found that substantial numbers of pregnant, postpartum and breast-feeding women, infants and young children from families with inadequate income are a special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. The purpose of the program is to provide supplemental foods and nutrition education through clinics to eligible persons. The program serves as an adjunct to good health care, during critical times of growth and development, in order to prevent the occurrence of health problems and improve the health status of these persons.

(2) The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is a supplemental foods and nutrition education program funded by U.S.D.A. and administered by the Utah Department of Health, Division of Family Health and Preparedness, through local health departments.

(3) WIC provides specified nutritious food supplements and nutrition education to pregnant, postpartum and breast-feeding women, infants and children (up to five years of age) from families with inadequate income and who are determined by competent professionals (physicians, nutritionists, nurses and other trained health officials) to be at "nutritional risk".

(4) The following criteria shall be met to be eligible to receive supplemental foods:

(a) Category and Age:

(i) pregnant women for the duration of the pregnancy and up to six weeks postpartum;

(ii) breast-feeding women up to 12 months past delivery;

(iii) postpartum women up to six months past delivery;

(iv) infants and children up to five years of age.

(b) Residence: Residents of areas or members of populations served by the clinic and within the jurisdiction of the state.

(c) Income: Determined to be a member of a family or family group which has a gross income at or below 185% of the poverty guideline established by the federal government.

(d) Nutritional Risk: Certified by a competent professional authority on the staff of the clinic to be at nutritional need through a medical or nutritional assessment.

(5) Participants must be certified approximately every six months to one year to determine their eligibility for the program, unless the participant is a pregnant women. Pregnant women are certified for the duration of their pregnancy. The length of certification periods for all categories of participants is determined by U.S.D.A. regulations as listed in 7CFR 246.7(g).

(6) Upon certification for the program, eligible women, infants and children are issued checks to use for obtaining prescribed supplemental foods.

(7) WIC participants may exchange their checks for prescribed foods at retail stores which have entered into signed vendor agreements with the State WIC Office. The check front is signed by the WIC participant at the retailer's check-out counter. The check is then processed like any check through normal bank clearing procedures. WIC checks must be used within the timeframe of the first and last dates to use as specified on the check. Retailers must redeem any checks they receive within 60 days of the first date to use.

(8) The WIC Program represents more than just a check for food. A primary concern of the program is to deliver preventive health care. Through dietary counseling and nutrition education, participants may come to understand the relationship between good nutrition and their health. In addition, participants needing other health or social services are identified at the time of certification and referred to the appropriate agency.

(9) The "State Plan of Program Operation and Administration" is submitted annually to the U.S. Department of Agriculture, Food and Nutrition Service, for approval. Many inclusions are mandated by the WIC program regulations while others are details specific to Utah's program. The state plan outlines general details concerning the operation and administration of the WIC Program in the state of Utah. The "Utah State WIC Policy and Procedures Manual" deals specifically with areas of Program operation and administration.

(10) Copies of the state plan may be obtained from the State WIC Office.

(11) Proposed revisions to the Utah WIC Policy and Procedures Manual are posted annually to the Utah WIC web site at www.health.utah.gov/wic for public comment.

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Notice of Continuation January 30, 2017

R406. Health, Family Health and Preparedness, WIC Services.
R406-201. Outreach Program.
R406-201-1. Availability of WIC Program Benefits.

(1) Public Law 95-627 requires that the Utah State WIC Office in cooperation with participating local agencies publicize the availability of WIC program benefits to offices and organizations that deal with significant numbers of potentially eligible persons.

(2) Legislation has also mandated that the State WIC Office and clinics coordinate with the Food Stamp Program and the Expanded Food and Nutrition Program and other special counseling services that may affect the health and well-being of pregnant women and children.

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R406. Health, Family Health and Preparedness, WIC Services.
R406-202. Eligibility.
R406-202-1. Certification and Eligibility.

(1) The State WIC Office shall provide all clinics with:

(a) a uniform system for determining the eligibility of persons for the WIC program;

(b) uniform eligibility requirements and certification procedures;

(c) a management information system which shall be used to electronically enter applications, determine eligibility and document all nutritional risk, income and residency requirements for the certification process.

(2) The certification process is described as follows:

(a) When there are adequate program funds, each clinic will accept applications, determine eligibility and notify the applicants of their eligibility.

(b) When there are not funds available to provide program benefits, all applicants shall be placed on a waiting list and shall be notified, in writing, within 20 days of their application date. The application date is the date the applicant visits the clinic during clinic office hours to request program benefits.

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R406. Health, Family Health and Preparedness, WIC Services.
R406-301. Clinic Guidelines.
R406-301-1. Development and Implementation of Guidelines.

Each clinic approved for participation in the WIC program may develop clinic guidelines for more efficient and equitable program operations. However, in every instance, these guidelines must be approved by the State WIC Office prior to implementation by the clinic. All clinic guidelines must comply with federal and state WIC laws.

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Notice of Continuation January 30, 2017

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-10A. Transplant Services Standards.
R414-10A-1. Introduction and Authority.

(1) This rule establishes standards and requirements for tissue and organ transplantation services for the State of Utah Medicaid Program.

(2) Title XIX of the Social Security Act allows coverage of transplantation services when there is no discrimination in the availability of services and high quality care is available to all eligible individuals.

(3) Section 26-18-2.3 grants the Department of Health discretion to fund transplantation services.

R414-10A-2. Definitions.

For purposes of Rule R414-10A:

(1) "Abstinence" means the documented non-use of any abusable substance by the patient.

(2) "Abusable substance" means any substance which is not appropriately prescribed and taken under the direction of a physician or is not medically indicated. This includes, but is not limited to, over-the-counter medicines, prescription medicines, alcohol, tobacco (including nicotine-bearing vapor products), cannabis, benzodiazepines, narcotics, methadone, cocaine, amphetamines, opiates, tricyclic antidepressants, barbiturates, and street drugs.

(3) "Active infection" means current presumptive evidence of invasion of tissue or body fluids by bacteria, viruses, fungi, rickettsiae, or parasites which is not demonstrated to be effectively controlled by the host, antibiotic or antimicrobial agents.

(4) "Active substance use" means the current use (within the most recent six months) of any abusable substance or substances that can adversely impact treatment outcomes or treatment plan adherence. This may include the personal admission of substance use with a positive drug screen.

(5) "Allogenic" means having a different genetic constitution but belonging to the same species.

(6) "Autologous" means the products or components of the same individual person.

(7) "Department" means the Utah Department of Health.

(8) "Drug screen" means testing to identify the presence of one or more drugs or substances as stated in Subsection R414-10A-2(2), which can adversely impact treatment outcomes or treatment plan adherence.

(9) "Emergency transplantation" means any transplantation which for reasons of medical necessity requires that a transplant be performed less than five days after determination of the need for the procedure.

(10) "Hematopoietic stem cell transplantation and bone marrow transplantation" means transplantation of cells from the bone marrow stem cells, peripheral blood stem cells, or cord blood stem cells to supplant the patient's bone marrow.

(11) "Intestine transplantation" means transplantation of the small bowel or both the small bowel and colon.

(12) "Medical necessity", for purposes of this rule, means a patient's medical condition that meets all the requirements and none of the contraindications for the type of transplantation requested.

(13) "Multi-organ transplantations" means, except for corneas, the transplantation of more than one tissue or organ during the same operative procedure.

(14) "Medicare-approved transplant center" means a center that meets Medicare's conditions of participation for transplant hospitals or, for purposes of this rule, is an approved National Marrow Donor Program (NMDP) bone marrow transplant center.

(15) "Patient" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider and is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

(16) "Remission" means the lack of any evidence of the cancer on physical examination and hematological evaluation, including normocellular bone marrow with less than five percent blast cells, and peripheral blood counts within normal values, except for patients who are receiving maintenance chemotherapy.

(17) "Services" means the type of medical assistance specified in Subsections 1905(a)(1) through (24) of the Social Security Act and interpreted in 42 CFR 440, Subpart A.

(18) "Substance use treatment program" means a treatment program developed and conducted by an inpatient or outpatient facility that, at a minimum, meets the standards of organization and staff of a chemical dependency and substance use disorder specialty facility specified in Section R432-101-4 and Rule R501-21.

(19) "Transplantation" means the transfer of a human organ or tissue from one person to another or from one site to another in the same individual, excluding skin, tendon, and bone.

R414-10A-3. Patient Eligibility Requirements for Coverage of Transplantation Services.

Transplantation services are available to categorically eligible and medically needy individuals who are Title XIX eligible and meet the requirements in this rule at the time the transplantation service is provided.

R414-10A-4. Program Access Requirements.

(1) Transplantation services may be provided only for eligible patients who meet the requirements in this rule and only for services covered under the Utah Medicaid program.

(2) Transplantation services may be provided only in a Medicare-approved transplant center.

(3) Transplantation services may be provided out-of-state in a Medicare-approved facility only when the service is not available in an approved facility in the state of Utah.

(4) All Utah transplant requirements and policies are applicable to in-state and out-of-state transplant services and facilities.

R414-10A-5. Service Coverage.

(1) Transplantation services are covered by the Utah Medicaid program only when requirements in this rule are met.

(2) Multi-organ transplantation services may be provided only when the requirements for each individual transplant are met.

(3) Repeat transplantations of the same tissues or organs may be covered only under Departmental review and approval based on requirements in this rule.

(4) The following transplants are covered when requirements in this rule are met:

(a) Cornea, heart, lung, kidney, liver, pancreas, intestine, bone marrow, hematopoietic stem cell.

(b) Some combinations of the above may also qualify.

(5) Emergency transplantations may be covered if all requirements are met.

R414-10A-6. Prior Authorization.

(1) Prior authorization (PA) may be required for any transplantation service.

(a) To determine if PA is required, refer to the Utah Medicaid Coverage and Reimbursement Code Lookup tool.

(2) The Department's evidence-based criteria may be used, when available, as part of the PA process.

(3) If PA is required, the request must include documentation that the patient meets the organ specific

requirements in this rule.

(4) The PA request for transplantation services must include:

(a) A description of condition needing transplantation;

(b) Transplantation treatment alternatives utilized previous to the transplant request;

(c) Transplantation treatment alternatives considered and discarded, including rationale for discarding;

(d) A comprehensive examination, evaluation and recommendation completed by a Board-Certified or Board-Eligible specialist and medical and surgical specialists in the field directly related to the patient's condition, which demonstrates the need for a transplant. The patient must also demonstrate the ability to tolerate the proposed transplant and subsequent treatment regimen;

(e) A comprehensive psycho-social evaluation of the patient that includes:

i. motivation for transplant;

ii. willingness and ability to follow a long-term treatment and follow-up regimen; and

iii. history of active substance use.

(f) If the patient is less than 18 years of age, a comprehensive psycho-social evaluation of the patient's parent or guardian that includes:

i. motivation for transplant;

ii. willingness and ability to follow a long-term treatment and follow-up regimen; and

iii. history of active substance use.

(g) A comprehensive psychiatric evaluation, if the patient has a history of mental illness.

(h) Documentation of a successfully completed treatment program or abstinence, if the patient has a history of substance use.

(i) Treatment program success and abstinence are supported by negative drug screens for a minimum of six months, with two negative drug screens in the most recent three months. The timing of the drug screens is in relation to the PA request date.

(j) If the history of substance use involves drugs other than those listed in this rule under Section R414-10A-2, then the drug screens must include the other substance upon drug testing availability.

(k) The patient may not be an active substance user as defined under Section R414-10A-2.

(l) Comprehensive infectious disease evaluation for a patient with a recent or current suspected infectious episode.

(m) All applicable hospital and clinic records.

(n) Completed cancer screening tests.

(o) All relevant laboratory and imaging studies.

(p) Documentation that the patient meets the eligibility and selection criteria for the transplant facility where the transplant will be performed.

(q) Any other documentation requested by PA or the Department's physician consultants.

(5) If incomplete documentation is received by the Department, the patient's case is pended until the requested documentation has been received.

(6) If a transplant requiring PA is performed without PA, reimbursement may be denied for all services related to the transplant up to the outlier threshold days for the specific type of transplant.

(7) Refer to the Section I: General Information Provider Manual for retroactive authorization for emergency transplant services.

R414-10A-7. Solid Organ Transplantation, Covered Services and Requirements.

(1) The following solid organ transplant services are covered. Minimum requirements for specific transplant services are shown. As required by 42 CFR 482, Subpart E, each transplant center must also have written selection criteria.

(2) All patients must be free of active infection. Liver transplants are excepted as noted.

(3) Liver.

(a) The patient must:

(i) have progressive, irreversible liver disease requiring transplant;

(ii) be free from active infection outside the hepatobiliary system;

(iii) not have acute, severe hemodynamic compromise at the time of transplantation if this compromises non-hepatic end-organs;

(iv) be free from significant pulmonary disease;

(v) be free from any significant cardiovascular disease; and

(vi) not have stage IV hepatic coma.

(4) Cornea.

(a) The patient must be free of other associated disease that may preclude visual improvement with transplant.

(5) Cardiac.

(a) The patient must:

(i) have irreversible and progressive cardiac disease with a life expectancy of one year or less without transplant or progressive pulmonary hypertension without other treatment options; and

(ii) be free from significant pulmonary disease, except pulmonary hypertension.

(6) Intestine.

(a) The patient must:

(i) have short bowel syndrome or irreversible and progressive small bowel disease requiring daily hyperalimentation without reasonable alternatives;

(ii) be free from significant pulmonary disease; and

(iii) be free from significant cardiovascular disease.

(7) Kidney.

(a) The patient must:

(i) have irreversible, progressive end-stage renal disease;

(ii) not have acute, severe hemodynamic compromise at the time of transplantation if this compromises non-renal end-organs;

(iii) be free from significant pulmonary disease; and

(iv) be free from any significant cardiovascular disease.

(8) Lung.

(a) The patient must:

(i) not have acute, severe hemodynamic compromise at the time of the transplantation if this compromises non-pulmonary end-organs;

(ii) be free from significant cardiovascular disease; and

(iii) demonstrate abstinence from tobacco use within the last 6 months.

(9) Pancreas.

(a) The patient must:

(i) have type I diabetes mellitus;

(ii) not have acute, severe hemodynamic compromise at the time of the transplantation if this compromises end-organs;

(iii) not have active peptic ulcer disease;

(iv) be free from significant cardiovascular disease; and

(v) be free from significant pulmonary disease.

(10) Multi-organ transplants.

(a) Kidney/pancreas, liver/kidney, cardiac/lung, intestine/liver, and other multi-organ transplants may be considered;

(i) each case is reviewed individually as to medical necessity and appropriateness; and

(ii) complete documentation, including justification and outcomes, must be provided.

R414-10A-8. Solid Organ Transplantation, Non-Covered Services.

(1) Transplants requiring prior authorization performed without prior authorization. (Refer to the Section I: General Information Provider Manual for request for retroactive authorization for emergency transplant services.)

(2) Transplant for patients who did not qualify for Medicaid benefits at the time of transplantation. (Retroactive Medicaid qualification may be an exception.)

(3) Transplants which are experimental or investigational in nature.

(4) Transplant of beta cells or other pancreas cells not part of a pancreatic organ transplantation.

(5) Transplant of cells or tissues into the coronary arteries, myocardium, central nervous system, or spinal cord.

(6) "Bridge-to-transplant" devices for heart transplant:

(a) Temporary or implanted ventricular assist devices with the exception of intra-aortic balloon assist devices;

(b) Temporary or implanted biventricular assist devices; or

(c) Temporary or implanted mechanical heart.

(7) Transplants to patients with:

(a) Malignant neoplasm with a high risk for reoccurrence and non-curable malignancy (excluding localized skin cancer).

(b) Chronic illness with one year or less life expectancy.

(c) Limited, irreversible rehabilitation potential.

(8) All other conditions not specifically listed as covered in the rule.

R414-10A-9. Hematopoietic Stem Cell Transplantation (HSCT), Covered Services and Requirements.

(1) Allogeneic and syngeneic hematopoietic stem cell transplantation may be approved only when the patient has a suitable HLA-matched donor and one of the covered conditions is present.

(a) A search of related family members, unrelated persons, or both to find a suitable donor is a covered service.

(2) Patient must have adequate marrow and lack of marrow involvement of primary malignancy if autologous transplant.

(3) Patient must be free from any active infection.

(4) Allogeneic Hematopoietic Stem Cell Transplantation (ASCT) is covered for:

(a) Leukemia, leukemia in remission, or aplastic anemia; or

(b) Severe Combined Immunodeficiency Disease (SCID) and for the treatment of Wiskott-Aldrich syndrome.

(5) Autologous Hematopoietic Stem Cell Transplantation (AuSCT) is covered for:

(a) Acute leukemia in remission with a high probability of relapse and has no Human Leucocyte Antigens (HLA)-matched;

(b) Resistant non-Hodgkin's lymphomas or those presenting with poor prognostic features following an initial response;

(c) Recurrent or refractory neuroblastoma; and

(d) Advanced Hodgkin's disease with failed conventional therapy and has no HLA-matched donor.

(e) Single AuSCT is only covered for Durie-Salmon Stage II or III that fit the following requirements:

(i) Newly diagnosed or responsive multiple myeloma. This includes those patients with previously untreated disease, those with at least a partial response to prior chemotherapy (defined as a 50 percent decrease either in measurable paraprotein (serum, urine or both) or in bone marrow infiltration, sustained for at least one month), and those in responsive relapse; and

(ii) adequate cardiac, renal, pulmonary, and hepatic function.

(f) When recognized clinical risk factors are employed to select patients for transplantation, High Dose Melphalan (HDM) together with AuSCT is medically reasonable and necessary for any age group with primary Amyloid Light (AL) chain amyloidosis who meet the following criteria:

(i) Amyloid deposition in two or fewer organs; and

(ii) Cardiac left ventricular Ejection Fraction (EF) greater than 45 percent.

R414-10A-10. HSCT Transplantation, Non-Covered Services.

(1) HSCT is not covered as treatment for multiple myeloma.

(2) AuSCT is not covered for:

(a) Acute leukemia not in remission;

(b) Chronic granulocytic leukemia;

(c) Solid tumors (other than neuroblastoma);

(d) Tandem transplantation (multiple rounds of AuSCT) for patients with multiple myeloma;

(e) Non-primary AL amyloidosis; or

(f) Primary AL amyloidosis for patients who are at least 64 years of age.

(3) All other conditions not specifically listed as covered in this rule.

R414-10A-11. Requests for Non-Covered Transplantation Services.

Requests for non-covered services are considered based on evidence submitted as to the efficacy of the requested services. These requests are reviewed on a case-by-case basis and require Medicaid Director or designee approval. Evidence types may include, but are not limited to:

(1) Evidence published in peer-reviewed medical journals listed on the Centers for Medicare and Medicaid Services (CMS) website.

(2) Evidence of acceptable survival rates with the proposed protocol in groups with similar clinical characteristics to the patient:

(a) The current survival rate threshold is at least 75 percent one-year survival and at least 55 percent three-year survival; or

(b) Similar characteristics include age, tumor type, tumor size, resection status, presence of metastases, etc.

(3) Study size with sufficient number of individuals for statistical analysis; or

(4) Evidence that the proposed protocol is a less costly alternative to other potential treatment protocols.

KEY: Medicaid
December 15, 2016 26-1-5
Notice of Continuation January 6, 2017 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-21. Physical Therapy and Occupational Therapy.
R414-21-1. Introduction.

The Physical Therapy and Occupational Therapy programs provide a scope of services for Medicaid recipients in accordance with the Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid
January 10, 2014 **26-1-4.1**
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26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.
R414-304-1. Authority and Purpose.

(1) This rule is established under the authority of Section 26-18-3.

(2) The purpose of this rule is to establish the income eligibility criteria for determining eligibility for medical assistance programs.

R414-304-2. Definitions.

(1) The definitions in Rule R414-1, Rule R414-301, and Rule R414-303 apply to this rule. In addition:

(a) "Aid to Families with Dependent Children" (AFDC) means a State Plan for aid that was in effect on June 16, 1996.

(b) "Allocation for a spouse" means an amount of income that is the difference between the Social Security Income (SSI) federal benefit rate for a couple minus the federal benefit rate for an individual.

(c) "Basic maintenance standard" or "BMS" means the income level for eligibility for Medicaid coverage of the medically needy based on the number of family members who are counted in the household size.

(d) "Benefit month" means a month or any portion of a month for which an individual is eligible for medical assistance.

(e) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(f) "Deeming" or "deemed" means a process of counting income from a spouse or a parent, or the sponsor of a qualified alien, to decide what amount of income after certain allowable deductions, if any, must be considered income to the applicant or recipient.

(g) "Eligible spouse" means the member of a married couple who is either aged, blind or disabled.

(h) "Factoring" means that the eligibility agency calculates the monthly income by prorating income to account for months when an individual receives a fifth payment when paid weekly, or a third paycheck with paid every other week. Weekly income is factored by multiplying the weekly income amount by 4.3 to obtain a monthly amount. Income paid every other week is factored by multiplying the bi-weekly income by 2.15 to obtain a monthly amount.

(i) "Family Medicaid" means medical assistance for families caring for dependent children and is a general term used to refer to Medicaid coverage for medically needy parents, caretaker relatives, pregnant women, and children.

(j) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse, the spouse of the client, and the parents of a dependent child.

(k) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(l) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(m) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(n) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(o) "Income anticipating" means using current facts regarding rate of pay and number of working hours, and reasonably expected future income changes, to anticipate future monthly income.

(p) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(q) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(r) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that lead to gainful employment.

(s) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount will not exceed one-third of the SSI federal benefit rate plus $20.

(t) "Temporarily absent" means a member of a household is living away from the home for a period of time but intends to return to the home when the reason for the temporary absence is accomplished. Reasons for a temporary absence may include an absence for the purpose of education, medical care, visits, military service, temporary religious service or other volunteer service such as the Peace Corps.

R414-304-3. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Unearned Income Provisions.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, 416.1163 through 416.1166, and Appendix to Subpart K of 416, April 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws in effect January 1, 2013, to determine income and income deductions for Medicaid eligibility. The Department may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count Veterans Administration (VA) payments for aid and attendance or the portion of a VA payment that an individual receives because of unusual medical expenses. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

(3) The eligibility agency may only count as income the portion of a VA check to which the individual is legally entitled.

(4) The eligibility agency may not count as income Social Security Administration (SSA) reimbursements of Medicare premiums.

(5) The eligibility agency may not count as income the value of special circumstance items if the items are paid for by donors.

(6) For aged, blind and disabled Medicaid, the eligibility agency shall count as income two-thirds of current child support that an individual receives in a month for the disabled child. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division.

(7) The eligibility agency shall count as income of the child, child support payments received from a parent or guardian for past months or years.

(8) The agency shall use countable income of the parent to determine the amount of income that will be deemed from the parent to the child to determine the child's eligibility.

(9) For aged, blind and disabled Institutional Medicaid, court-ordered child support payments collected by the Office of

Recovery Services (ORS) for a child who resides out-of-home in a Medicaid 24-hour care facility are not counted as income to the child. If ORS allows the parent to retain up to the amount of the personal needs allowance for the child's personal needs, that amount is counted as income for the child. All other current child support payments received by the child or guardian that are not subject to collection by ORS count as unearned income to the child.

(10) The eligibility agency shall count as unearned income the interest earned from a sales contract on either or both the lump sum and installment payments when the interest is received or made available to the client.

(11) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(12) Payments under a contract that provide for payments at set intervals or after completion of the contract period are not lump sum payments. The payments are subject to regular income counting rules. Retroactive payments from SSI and SSA reimbursements of Medicare premiums are not lump sum payments.

(13) The eligibility agency may not count as income educational loans, grants, and scholarships received from Title IV programs of the Higher Education Act or from Bureau of Indian Affairs educational programs, and may not count any other grants, scholarships, fellowships, or gifts that a client uses to pay for education. The eligibility agency shall count as income, in the month that the client receives them, any amount of grants, scholarships, fellowships, or gifts that the client uses to pay for non-educational expenses. Allowable educational expenses include:

(a) tuition;

(b) fees;

(c) books;

(d) equipment;

(e) special clothing needed for classes;

(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount; and

(g) child care necessary for school attendance.

(14) The eligibility agency may not count as income, payments from a qualified long-term care insurance partnership plan as defined in 42 U.S.C. 1396p(b)(1)(C)(iii), paid directly to a long-term care provider or collected by the Office of Recovery Services as a third-party liability source.

(15) Except for an individual eligible for the Medicaid Work Incentive (MWI) program, the following provisions apply to non-institutional medical assistance:

(a) For aged, blind and disabled Medicaid, the eligibility agency may not count income of a spouse or a parent to determine Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors are eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind or disabled person has more income after deductions than the allocation for a spouse, the eligibility agency shall deem the spouse's income to the aged, blind or disabled spouse to determine eligibility.

(c) The eligibility agency shall determine household size and whose income counts for aged, blind and disabled Medicaid as described below.

(i) If only one spouse is aged, blind or disabled:

(A) The eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The eligibility agency shall compare the combined income to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, the eligibility agency shall compare the combined income, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the eligibility agency may not count the ineligible spouse's income and may not include the ineligible spouse in the household size. Only the eligible spouse's income is compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it is compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged, blind or disabled, the eligibility agency shall combine the income of both spouses and compare to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount and one spouse receives SSI, the eligibility agency may only compare the income of the non-SSI spouse, after allowable deductions, to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds 100% of the federal poverty guideline, the eligibility agency shall compare the income of both spouses, after allowable deductions, to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, the eligibility agency shall deem income of the non-covered spouse to the covered spouse when that income exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, the eligibility agency may only count the covered spouse's income. In both cases, the countable income is compared to 100% of the two-person poverty guideline. If the countable income exceeds the limit, the eligibility agency shall compare the income, after allowable deductions, to the BMS.

(I) If the non-covered spouse has income to deem to the covered spouse, the eligibility agency shall compare the countable income, after allowable deductions, to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have income to deem to the covered spouse, the eligibility agency may only compare the covered spouse's income, after allowable deductions, to a one-person BMS to calculate the spenddown.

(iii) In determining eligibility under (c) for an aged or disabled person whose spouse is blind, both spouses' income is combined.

(A) If the combined income after allowable deductions is under 100% of the federal poverty guideline, the aged or disabled spouse will be eligible under the 100% poverty group defined in 1902(a)(10)(A)(ii) of the Social Security Act, and the blind spouse is eligible without a spenddown under the medically needy group defined in 42 CFR 435.301.

(B) If the combined income after allowable deductions is over 100% of poverty, both spouses are eligible with a spenddown under the medically needy group defined in 42 CFR 435.301.

(iv) If one spouse is disabled and working, the other is aged, blind or disabled and not working, and neither spouse is an SSI recipient nor a 1619(b) eligible individual, the working disabled spouse may choose to receive coverage under the MWI program. If both spouses want coverage, however, the eligibility agency shall first determine eligibility for them as a couple. If a spenddown is owed for them as a couple, they must meet the spenddown to receive coverage for both of them.

(d) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, the eligibility agency shall not deem income from a spouse who meets 1619(b) protected group criteria.

(e) The eligibility agency shall determine household size and whose income counts for QMB, SLMB, and QI assistance as described below:

(i) If both spouses receive Part A Medicare and both want coverage, the eligibility agency shall combine income of both spouses and compare it to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare and the other spouse is aged, blind or disabled and does not receive Part A Medicare or does not want coverage, then the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse is counted. In both cases, the eligibility agency shall compare the countable income to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The agency shall combine countable income to the applicable percentage of the federal poverty guideline for a two-person household. If the deemed income of the ineligible spouse does not exceed the allocation for a spouse, only the eligible spouse's income is counted and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) The eligibility agency may not count SSI income to determine eligibility for QMB, SLMB or QI assistance.

(f) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the eligibility agency may not count the income of either parent to determine a child's eligibility for B or D Medicaid.

(g) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(16) For Institutional Medicaid, the eligibility agency may only count the client in the household size. Only the client's income and deemed income from an alien client's sponsor is counted to determine the cost of care contribution. The provisions in Rule R414-307 govern who to include in the household size and whose income is counted to determine eligibility for home and community-based waiver services and the cost-of-care contribution.

(17) The eligibility agency shall deem, and count as unearned income, both unearned and earned income from an alien's sponsor and the sponsor's spouse when the sponsor signs an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall end sponsor deeming when the alien becomes a naturalized United States (U.S.) citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act, or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(b) The eligibility agency may not apply sponsor deeming to applicants or recipients who are eligible for Medicaid for emergency services only, or who are eligible for Medicaid as described in Subsection R414-302-3(2).

(18) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count as income the amount that is paid to the individual.

(19) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(20) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409, Pub. L. 112 240.

(21) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(22) The eligibility agency may not count as income, payments from the Department of Workforce Services under the Family Employment program, the General Assistance program, or the Refugee Cash Assistance program.

R414-304-4. Medicaid Work Incentive Program Unearned Income Provisions.

(1) The Department adopts and incorporates by reference 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, and Appendix to Subpart K of 416, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws, effective January 1, 2013. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency shall allow the provisions found in Subsection R414-304-3(2) through (13), and (17) through (21).

(3) The eligibility agency shall determine income from an ineligible spouse or parent by the total of the earned and unearned income using the appropriate exclusions in 20 CFR 416.1161, except that court ordered support payments are not allowed as an income deduction.

(4) For the MWI program, the income of a spouse or parent is not considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other MWI program eligibility factors are eligible without paying a Medicaid buy-in premium.

(5) The eligibility agency shall determine household size and whose income counts for the MWI program as described below:

(a) If the MWI program individual is an adult and is not living with a spouse, the eligibility agency may only count the income of the individual. The eligibility agency shall include in the household size, any children of the individual who are under 18 years of age, or who are 18, 19, or 20 years of age and are full-time students. These children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income to 250% of the federal poverty guideline for the household size involved.

(b) If the MWI program individual is living with a spouse, the eligibility agency shall combine their income before

allowing any deductions. The eligibility agency shall include in the household size the spouse and any children of the individual or spouse under 18 years of age, or who are 18, 19, or 20 years of age and are full-time students. These children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income of the MWI program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the MWI program individual is a child living with a parent, the eligibility agency shall combine the income of the MWI program individual and the parents before allowing any deductions. The eligibility agency shall include in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students, who are living in the home or temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income of the MWI program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

R414-304-5. MAGI-Based Coverage Groups.

(1) The Department adopts and incorporates by reference 42 CFR 435.603 (October 1, 2015), which applies to the methodology of determining household composition and income using the Modified Adjusted Gross Income (MAGI)-based methodology.

(a) The eligibility agency shall count in the household size, the number of unborn children that a pregnant household member expects to deliver.

(b) The Department elects the option in 42 CFR 435.603(f)(3)(iv)(B).

(c) The eligibility agency will treat separated spouses, who are not living together, as separate households.

(2) The eligibility agency may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(3) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(4) The eligibility agency shall count as income cash support received by an individual when:

(a) it is received from the tax filer who claims a tax exemption for the individual;

(b) the individual is not a spouse or child of the tax filer; and

(c) the cash support exceeds a nominal amount set by the Department.

(5) To determine eligibility for MAGI-based coverage groups, the eligibility agency deducts an amount equal to 5% of the federal poverty guideline for the applicable household size from the MAGI-based household income determined for the individual. This deduction is allowed only to determine eligibility for the eligibility group with the highest income standard for which the individual may qualify.

R414-304-6. Unearned Income Provisions for Medically Needy Family, Child and Pregnant Woman Non-Institutional and Institutional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831,October 1, 2012 ed., 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(vi)(A), 233.20(a)(4)(ii), October 1, 2012 ed., and Subsection 404(h)(4) of the Compilation of the Social Security Laws, in effect January 1, 2013. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count as income money loaned to the individual if the individual proves the money is from a loan that the individual is expected to repay.

(3) The eligibility agency may not count as income support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services.

(4) The eligibility agency may not count as income the value of food stamp assistance, USDA food donations or WIC vouchers received by members of the household.

(5) The eligibility agency may not count income that is received too irregularly or infrequently to count as regular income, such as cash gifts, up to $30 a calendar quarter per household member. Any amount that exceeds $30 a calendar quarter per household member counts as income when received. Irregular or infrequent income may be divided equally among all members of the household.

(6) The eligibility agency may not count as income the amount deducted from benefit income to repay an overpayment.

(7) The eligibility agency may not count as income the value of special circumstance items paid for by donors.

(8) The eligibility agency may not count as income payments for home energy assistance.

(9) The eligibility agency may not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, the eligibility agency may only count the amount that the client does not intend to use or that is more than what is needed for temporary housing.

(10) The eligibility agency may not count as income SSA reimbursements of Medicare premiums.

(11) The eligibility agency may not count as income payments from the Department of Workforce Services under the Family Employment program, the General Assistance program, and the Refugee Cash Assistance program. To determine eligibility, the eligibility agency shall count income that the client receives to determine the amount of these payments, unless the income is an excluded income for medical assistance programs under other laws or regulations.

(12) The eligibility agency may not count as income interest or dividends earned on countable resources. The eligibility agency may not count as income interest or dividends earned on resources that are specifically excluded by federal laws from being counted as available resources to determine eligibility for federally-funded, means-tested medical assistance programs, other than resources excluded by 42 U.S.C. 1382b(a).

(13) The eligibility agency may not count as income the increase in pay for a member of the armed forces that is called "hostile fire pay" or "imminent danger pay," which is compensation for active military duty in a combat zone.

(14) The eligibility agency shall count as income SSI and State Supplemental payments received by children who are included in the coverage under medically needy Medicaid programs for families, pregnant women and children.

(15) The eligibility agency shall count unearned rental income. The eligibility agency shall deduct $30 a month from the rental income. If the amount charged for the rental is consistent with community standards, the eligibility agency shall deduct the greater of either $30 or the following actual expenses that the client can verify:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property, including utility costs paid by the applicant or recipient;

(c) interest paid on a loan or mortgage made for upkeep or repair; and

(d) the value of a one-person food stamp allotment, if meals are provided to a boarder.

(16) The eligibility agency shall count deferred income when the client receives the income, the client does not defer the

income by choice, and the client reasonably expects to receive the income. If the client defers the income by choice, the agency shall count the income according to when the client could receive the income. The eligibility agency shall count as income the amount deducted from income to pay for benefits like health insurance, medical expenses or child care in the month that the client could receive the income.

(17) The eligibility agency shall count the amount deducted from income to pay an obligation of child support, alimony or debts in the month that the client could receive the income.

(18) The eligibility agency shall count payments from trust funds as income in the month the payment is received by the individual or made available for the individual's use.

(19) The eligibility agency may only count as income the portion of a VA check to which the individual is legally entitled.

(20) The eligibility agency shall count as income deposits to financial accounts jointly-owned between the client and one or more other individuals, even if the deposits are made by a non-household member. If the client disputes ownership of the deposits and provides adequate proof that the deposits do not represent income to the client, the eligibility agency may not count those funds as income. The eligibility agency may require the client to terminate access to the jointly-held accounts.

(21) The eligibility agency shall count as unearned income the interest earned from a sales contract on lump sum payments and installment payments when the interest payment is received by or made available to the client.

(22) The eligibility agency shall count current child support payments as income to the child for whom the payments are being made. If a payment is for more than one child, the agency shall divide that amount equally among the children unless a court order indicates otherwise. Child support payments received by a parent or guardian to repay amounts owed for past months or years are countable income to determine eligibility of the parent or guardian who receives the payments. If ORS collects current child support, the eligibility agency shall count the child support as current even if ORS mails the payment to the client after the month it is collected.

(23) The eligibility agency shall count payments from annuities as unearned income in the month that the client receives the payments.

(24) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count the amount paid to the individual.

(25) The eligibility agency shall deem, and count as unearned income, both unearned and earned income from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall stop deeming income from a sponsor when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(b) The eligibility agency may not apply sponsor deeming to applicants or recipients who are eligible for emergency services only, or who are eligible for Medicaid as described in Subsection R414-302-3(2).

(26) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(27) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409 of the American Taxpayer Relief Act of 2012, Pub. L. No. 112 240, 126, Stat. 2313.

(28) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

R414-304-7. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Earned Income Provisions.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., and 20 CFR 416.1110 through 416.1112, April 1, 2012 ed. The Department may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) If an SSI recipient has a plan for achieving self-support approved by the (SSA), the eligibility agency may not count income set aside in the plan that allows the individual to purchase work-related equipment or meet self-support goals. This income may include earned and unearned income.

(3) The eligibility agency may not deduct from income expenses relating to the fulfillment of a plan to achieve self-support.

(4) For Aged, Blind and Disabled Medicaid, the eligibility agency may not count earned income used to compute a needs-based grant.

(5) For aged, blind and disabled Institutional Medicaid, the eligibility agency shall deduct $125 from earned income before it determines contribution towards cost of care.

(6) The eligibility agency shall include capital gains in the gross income from self-employment.

(7) To determine countable net income from self-employment, the eligibility agency shall allow a 40% flat rate exclusion off the gross self-employment income as a deduction for business expenses. For a self-employed individual who has allowable business expenses greater than the 40% flat rate exclusion amount and who also provides verification of the expenses, the eligibility agency shall calculate the self-employment net profit amount by using the deductions that are allowed under federal income tax rules.

(8) The eligibility agency may not allow deductions for the following business expenses:

(a) transportation to and from work;

(b) payments on the principal for business resources;

(c) net losses from previous tax years;

(d) taxes;

(e) money set aside for retirement; and

(f) work-related personal expenses.

(9) The eligibility agency may deduct net losses of self-employment from the current tax year from other earned income.

(10) The eligibility agency shall disregard earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137,

435.138, 435.139, 435.211, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541. The eligibility agency shall also exclude this income for individuals described in Subsections 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), 1902(a)(10)(A)(ii)(XIII) and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act. The eligibility agency may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost of care contribution for long-term care recipients.

(11) The eligibility agency shall count deductions from earned income that include insurance premiums, savings, garnishments, or deferred income in the month when the client could receive the funds.

R414-304-8. Earned Income Provisions for Medically Needy Family, Child and Pregnant Woman Non-Institutional and Institutional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.811, 435.831, October 1, 2012 ed., and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), October 1, 2012 ed. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count the income of a dependent child if the child is:

(a) in school or training full-time;

(b) in school or training part-time, which means the child is enrolled for at least half of the hours needed to complete a course, or is enrolled in at least two classes or two hours of school a day and employed less than 100 hours a month; or

(c) is in a job placement under the federal Workforce Investment Act.

(3) For medically needy Family Medicaid, the eligibility agency shall allow the AFDC $30 and one-third of earned income deduction if the wage earner receives Parent/Caretaker Relative Medicaid in one of the four previous months and this disregard is not exhausted.

(4) The eligibility agency shall determine countable net income from self-employment by allowing a 40 % flat rate exclusion off the gross self-employment income as a deduction for business expenses. If a self-employed individual provides verification of actual business expenses greater than the 40 % flat rate exclusion amount, the eligibility agency shall allow actual expenses to be deducted. The expenses must be business expenses allowed under federal income tax rules.

(5) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(6) For Family Medicaid, the eligibility agency shall deduct from the income of clients who work at least 100 hours in a calendar month a maximum of $200 a month in child care costs for each child who is under the age of two and $175 a month in child care costs for each child who is at least two years of age. The maximum deduction of $175 shall also apply to provide care for an incapacitated adult. The eligibility agency shall deduct from the income of clients who work less than 100 hours in a calendar month a maximum of $160 a month in child care costs for each child who is under the age of two and $140 a month for each child who is at least two years of age. The maximum deduction of $140 a month shall also apply to provide care for an incapacitated adult.

(7) For Family Institutional Medicaid, the eligibility agency shall deduct a maximum of $160 in child care costs from the earned income of clients who work at least 100 hours in a calendar month. The eligibility agency shall deduct a maximum of $130 in child care costs from the earned income of clients working less than 100 hours in a calendar month.

(8) The eligibility agency shall exclude earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.301(b)1, 435.308, 435.310 and individuals defined in Title XIX of the Social Security Act Section 1902(e)(1), (7), and Section 1925. The eligibility agency may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost of care contribution for long-term care recipients.

R414-304-9. Aged, Blind and Disabled Non-Institutional Medicaid and Medically Needy Family, Pregnant Woman and Child Non-Institutional Medicaid Income Deductions.

(1) The Department adopts and incorporates by reference the financial methodologies required by 42 CFR 435.601, and the deductions defined in 42 CFR 435.831, October 1, 2012 ed.

(2) For aged, blind and disabled individuals eligible under 42 CFR 435.301(b)(2)(iii), (iv), and (v), described more fully in 42 CFR 435.320, .322 and .324, the eligibility agency shall deduct from income an amount equal to the difference between 100% of the federal poverty guideline and the current BMS income standard for the applicable household size to determine the spenddown amount.

(3) To determine eligibility for and the amount of a spenddown under medically needy programs, the eligibility agency shall deduct from income health insurance premiums the client or a financially responsible family member pays providing coverage for the client or any family members living with the client in the month of payment. The eligibility agency shall also deduct from income the amount of a health insurance premium the month it is due when the Department pays the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Compilation of the Social Security Laws, except no deduction is allowed for Medicare premiums that the Department pays for recipients.

(a) The eligibility agency shall deduct the entire payment in the month it is due and may not prorate the amount.

(b) The eligibility agency may not deduct health insurance premiums to determine eligibility for the poverty-related medical assistance programs or coverage groups subject to the use of MAGI-based methodologies.

(4) To determine the spenddown under medically needy programs, the eligibility agency shall deduct from income health insurance premiums that the client or a financially responsible family member pays in the application month or during the three-month retroactive period. The eligibility agency shall allow the deduction either in the month paid or in any month after the month paid to the extent the full amount was not deducted in the month paid, but only through the month of application.

(5) To determine eligibility for medically needy coverage groups, the eligibility agency shall deduct from income medically necessary expenses that the client verifies only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, a client's spouse, a parent of a dependent client, a dependent sibling of a dependent client, a deceased spouse, or a deceased dependent child;

(b) Medicaid does not cover the medical bill and it is not payable by a third party;

(c) The medical bill remains unpaid or the client receives and pays for the medical service during the month of application or during the three months immediately preceding the date of application. The date that the medical service is provided on an unpaid expense is irrelevant if the client still owes the provider for the service. Bills for services that the client receives and pays for during the application month or the three months

preceding the date of application can be used as deductions only through the month of application.

(6) The eligibility agency may not allow a medical expense as a deduction more than once.

(7) The eligibility agency may only allow as an income deduction a medical expense for a medically necessary service. The eligibility agency shall determine whether the service is medically necessary.

(8) The eligibility agency shall deduct medical expenses in the order required by 42 CFR 435.831(h)(1). When expenses have the same priority, the eligibility agency shall deduct paid expenses before unpaid expenses.

(9) A client who pays a cash spenddown may present proof of medical expenses paid during the coverage month and request a refund of spenddown paid up to the amount of bills paid by the client. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the Utah Medicaid State Plan;

(b) The expense must be for a service that the client receives during the benefit month;

(c) The Department may not refund any portion of any medical expense that the client uses to meet a Medicaid spenddown when the client assumes responsibility to pay that expense;

(d) A refund cannot exceed the actual cash spenddown amount paid by the client;

(e) The Department may not refund spenddown amounts that a client pays based on unpaid medical expenses for services that the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The client may use the unpaid bills to meet or reduce the spenddown that the client owes for a future month of Medicaid coverage to the extent that the bills remain unpaid at the beginning of the future month;

(f) The Department shall reduce the refund amount by the amount of any unpaid obligation that the client owes the Department.

(10) For poverty-related coverage groups and coverage groups subject to the MAGI-based methodologies, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency may not deduct medical costs from income to determine eligibility for poverty-related or MAGI-based medical assistance programs. An individual may not pay the difference between countable income and the applicable income limit to become eligible for poverty-related or MAGI-based medical assistance programs.

(11) When a client must meet a spenddown to become eligible for a medically needy program, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the eligibility agency told the client that the Medicaid provider may not use the provider's funds to pay the client's spenddown and that the provider may not loan the client money for the client to pay the spenddown.

(12) A client may meet the spenddown by paying the eligibility agency the amount with cash or check, or by providing proof to the eligibility agency of medical expenses that the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services that the client receives in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses may not be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the eligibility agency or by presenting a cash or check payment to the eligibility agency equal to the spenddown amount.

(13) The eligibility agency may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, the eligibility agency may not accept spenddown payments from a client if a Medicaid provider loans funds to the client to make a spenddown payment.

(14) The eligibility agency may only deduct the amount of prepaid medical expenses that equals the cost of services in a given month. The eligibility agency may not deduct from income any payments that a client makes for medical services in a month before the client receives the services.

(15) For non-institutional Medicaid programs, the eligibility agency may only deduct medically necessary expenses. The Department determines whether services for institutional care are medically necessary.

(16) The eligibility agency may not require a client to pay a spenddown of less than $1.

(17) Medical costs that a client incurs in a benefit month may not be used to meet spenddown when the client is enrolled in a Medicaid health plan. Bills for mental health services that a client incurs in a benefit month may not be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services that a client receives in a retroactive or application month that a client pays may be used to meet spenddown only if the Medicaid-contracted mental health provider does not provide the services.

R414-304-10. Medicaid Work Incentive Program Income Deductions.

(1) To determine eligibility for the MWI program, the eligibility agency shall deduct the following amounts from income to determine countable income that is compared to 250% of the federal poverty guideline:

(a) $20 from unearned income. If there is less than $20 in unearned income, the eligibility agency shall deduct the balance of the $20 from earned income;

(b) Impairment-related work expenses;

(c) $65 plus one-half of the remaining earned income;

(d) A current year loss from a self-employment business can be deducted only from other earned income.

(2) For the MWI program, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency may not deduct health insurance premiums and medical costs from income before comparing countable income to the applicable limit.

(3) The eligibility agency shall deduct from countable income the amount of health insurance premiums paid by the MWI-eligible individual or a financially responsible household member, to purchase health insurance for himself or other family members in the household before determining the MWI buy-in premium.

(4) An eligible individual may meet the MWI buy-in premium with cash, check or money order payable to the eligibility agency. The client may not meet the MWI premium with medical expenses.

(5) The eligibility agency may not require a client to pay a MWI buy-in premium of less than $1.

R414-304-11. Aged, Blind and Disabled Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts and incorporates by reference the financial methodologies required by 42 CFR 435.601 and the deductions defined in 42 CFR 435.725, 435.726, and 435.832, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 1902(r)(1) and 1924(d) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the eligibility agency shall deduct from income health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. The eligibility agency shall deduct health insurance premiums in the month the payment is due. The eligibility agency shall deduct the amount of a health insurance premium for the month it is due if the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, except no deduction is allowed for Medicare premiums that the Department pays for recipients.

(b) The eligibility agency shall deduct from income the portion of a combined premium attributable to the institutionalized or waiver-eligible client if the combined premium includes a spouse or dependent family member. The client's portion must be paid from the funds of the institutionalized or waiver-eligible client.

(3) The eligibility agency may only deduct medical expenses from income under the following conditions:

(a) the client receives the medical service;

(b) Medicaid or a third party will not pay the medical bill;

(c) a paid medical bill can only be deducted through the month of payment. No portion of any paid bill can be deducted after the month of payment.

(4) To determine the cost of care contribution for long-term care services, the eligibility agency may not deduct medical or remedial care expenses that the Department is prohibited from paying when the client incurs the expenses for the transfer of assets for less than fair market value. The eligibility agency may not deduct medical or remedial care expenses that the Department is prohibited from paying under Section 1917(f) of the Social Security Act in effect January 1, 2013, when the equity value of the individual's home exceeds the limit set by law. The eligibility agency may not deduct the expenses during or after the month that the client receives the services even when the expenses remain unpaid.

(5) The eligibility agency may not allow a medical expense as an income deduction more than once.

(6) The eligibility agency may only allow as an income deduction a medical expense for a medically necessary service. The eligibility agency shall determine whether the service is medically necessary.

(7) The eligibility agency may only deduct the amount of prepaid medical expenses that equals the cost of services in a given month. The eligibility agency may not deduct from income any payments that a client makes for medical services in a month before the client receives the services.

(8) When a client must meet a spenddown to become eligible for a medically needy program or receive Medicaid under a home and community based care waiver, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the eligibility agency told the client that the Medicaid provider may not use the provider's funds to pay the client's spenddown and that the provider may not loan the client money for the client to pay the spenddown.

(9) A client may meet the spenddown by paying the eligibility agency the amount with cash or check, or by providing proof to the eligibility agency of medical expenses that the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services that the client receives in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses may not be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the eligibility agency or by presenting a cash or check payment to the eligibility agency equal to the spenddown amount.

(10) The eligibility agency may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, the eligibility agency may not accept spenddown payments from a client if a Medicaid provider loans funds to the client to make a spenddown payment.

(11) The eligibility agency shall require institutionalized clients to pay all countable income remaining after allowable income deductions to the institution in which they reside as their cost of care contribution.

(12) A client who pays a cash spenddown or a cost-of-care amount to the medical facility in which he resides, may present proof of medical expenses paid during the coverage month and request a refund of spenddown or cost-of-care paid up to the amount of bills. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary medical expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the Utah Medicaid State Plan;

(b) The expense must be for a service that the client receives during the benefit month;

(c) The eligibility agency may not refund any portion of any medical expense that the client uses to meet a Medicaid spenddown or to reduce his cost-of-care to the institution when the client assumes that payment responsibility;

(d) A refund cannot exceed the actual cash spenddown or cost-of-care amount paid by the client;

(e) The eligibility agency may not refund spenddown or cost-of-care amounts paid by a client based on unpaid medical expenses for services that the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The client may use these unpaid bills to meet or reduce the spenddown that the client owes for a future month of Medicaid coverage to the extent that the bills remain unpaid at the beginning of the future month;

(f) The Department shall reduce a refund by the amount of any unpaid obligation that the client owes the Department.

(13) The eligibility agency shall deduct a personal needs allowance for residents of medical institutions equal to $45.

(14) When a doctor verifies that a single person or a person whose spouse resides in a medical institution is expected to return home within six months of entering a medical

institution or nursing home, the eligibility agency shall deduct a personal needs allowance equal to the BMS for one person defined in Subsection R414-304-13(6), for up to six months to maintain the individual's community residence.

(15) A client is not eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(16) Medical costs that a client incurs in a benefit month may not be used to meet spenddown when the client is enrolled in a Medicaid health plan. Bills for mental health services that a client incurs in a benefit month may not be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services that a client receives in a retroactive or application month that a client pays may be used to meet spenddown only if the Medicaid-contracted mental health provider does not provide the services.

R414-304-12. Budgeting.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.640, October 1, 2012 ed., and 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, October 1, 2012 ed., relating to financial responsibility and budgeting for non-MAGI-based Medicaid coverage groups.

(2) The Department adopts and incorporates by reference, 42 CFR 435.603(c), (d), (e), (g) and (h), October 1, 2012 ed., relating to household income and budgeting for MAGI-based Medicaid coverage groups.

(3) The eligibility agency shall do prospective budgeting to determine a household's expected monthly income.

(a) The eligibility agency shall include in the best estimate of MAGI-based income, reasonably predictable income changes such as seasonal income or contract income to determine the average monthly income expected to be received during the certification period.

(b) The eligibility agency shall prorate income over the eligibility period to determine an average monthly income.

(4) A best estimate of income based on the best available information is considered an accurate reflection of client income in that month.

(5) The eligibility agency shall use the best estimate of income to be received or made available to the client in a month to determine eligibility. For individuals eligible under a medically needy coverage group, the best estimate of income is used to determine the individual's spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) For non-MAGI-based coverage groups, the eligibility agency shall count income in the following manner:

(a) For QMB, SLMB, QI, MWI program, and aged, blind, disabled, and Institutional Medicaid income is counted as it is received. Income that is received weekly or every other week is not factored;

(b) For medically needy Family, Pregnant Woman and Child Medicaid programs, income that is received weekly or every other week is factored.

(8) Lump sums are income in the month received. Lump sum payments can be earned or unearned income.

(9) For non-MAGI-based coverage groups, income paid out under a contract is prorated over the time period the income is intended to cover to determine the countable income for each month. The prorated amount is used instead of actual income that a client receives to determine countable income for a month.

(10) To determine the average monthly income for farm and self-employment income, the eligibility agency shall determine the annual income earned during one or more past years, or other applicable time period, and factors in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income is adjusted during the year when information about changes or expected changes is received by the eligibility agency.

(11) Countable educational income that a client receives other than monthly income is prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months that classes are in session.

(12) Eligibility for retroactive assistance is based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method is used for the months in the retroactive period, except when the income was not being received during, and was not intended to cover those specific months in the retroactive period.

R414-304-13. Income Standards.

(1) The Department adopts and incorporates by reference Subsections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) The eligibility agency shall calculate the aged and disabled poverty-related Medicaid income standard as 100% of the federal non-farm poverty guideline. If an aged or disabled person's income exceeds this amount, the Basic Maintenance Standard (BMS) applies unless the disabled individual or a disabled aged individual has earned income. In that case, the income standards of the MWI program apply.

(3) The income standard for the MWI for disabled individuals with earned income is equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the BMS applies.

(a) The eligibility agency shall charge a MWI buy-in premium for the MWI program when the countable income of the eligible individual's or the couple's income exceeds 100% of the federal poverty guideline for the Aged and Disabled 100% poverty-related coverage group. When the eligible individual is a minor child, the eligibility agency shall charge a MWI buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one-person household.

(b) The premium is equal to 5% of income when income is over 100% but not more than 110% of the federal poverty guideline, 10% of income when income is over 110% but not over 120% of the federal poverty guideline, or 15% of income when income is over 120% of the federal poverty guideline. The premium is calculated using only the eligible individual's or eligible couple's countable income multiplied by the applicable percentage.

(4) The income limit for parents and caretaker relatives, pregnant women, and children under the age of 19 are defined in Section R414-303-4.

(5) To determine eligibility and the spenddown amount of individuals under medically needy coverage groups, the BMS applies.

(6) The BMS is as follows:

TABLE

Household Size	Basic Maintenance Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023

11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-14. Aged, Blind and Disabled Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.602, October 1, 2012 ed., and Subsections 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) The eligibility agency shall count the following individuals in the BMS for aged, blind and disabled Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for aged, blind and disabled Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemed income above the allocation for a spouse.

(3) The eligibility agency shall count the following individuals in the household size for the 100% of poverty aged or disabled Medicaid program:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemed income above the allocation for a spouse.

(4) The eligibility agency shall count the following individuals in the household size for a QMB, SLMB, or QI case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemed income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemed income above the allocation for a spouse.

(5) The eligibility agency shall count the following individuals in the household size for the MWI program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children who are under the age of 18;

(e) children who are 18, 19, or 20 years of age if they are in school full-time.

(6) Eligibility for aged, blind and disabled non-institutional Medicaid and the spenddown, if any; aged and disabled 100% poverty-related Medicaid; and QMB, SLMB, and QI programs is based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on Section R414-304-3;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(7) Eligibility for the MWI program is based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(8) If a person is included in the BMS, it means that the eligibility agency shall count that family member as part of the household and also count his income and resources to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is included in the household size, it means that the eligibility agency shall count that family member as part of the household to determine what income limit applies, regardless of whether the agency counts that family member's income or whether that family member receives medical assistance.

R414-304-15. Medically Needy Family, Pregnant Woman and Child Medicaid Filing Unit.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.602, October 1, 2012 ed., and 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), October 1, 2012 ed.

(2) If a household includes individuals who meet the U.S. citizen or qualified alien status requirements and family members who do not meet U.S. citizen or qualified alien status requirements, the eligibility agency shall include the ineligible alien family members in the household size to determine the applicable income limit for the eligible family members. The ineligible alien family members may not receive regular Medicaid coverage, but may be able to qualify for Medicaid that covers emergency services only under other provisions of Medicaid law.

(3) The eligibility agency may exclude any unemancipated minor child from the Medicaid coverage group, and may exclude an ineligible alien child from the household size at the request of the named relative who is responsible for the children. An excluded child is considered an ineligible child and is not counted as part of the household size to determine what income limit is applicable to the family. The eligibility agency may not consider income and resources of an excluded child to determine eligibility or spenddown.

(4) The eligibility agency may not include a non-parent caretaker relative in the household size of the minor child.

(5) If anyone in the household is pregnant, the eligibility agency shall include the expected number of unborn children in the household size.

(6) If the parents voluntarily place a child in foster care and in the custody of a state agency, the eligibility agency shall include the parents in the household size.

(7) The eligibility agency may not include parents in the household size who have relinquished their parental rights.

(8) If a court order places a child in the custody of the state and the state temporarily places the child in an institution, the eligibility agency may not include the parents in the household size.

(9) If the eligibility agency includes or counts a person in the household size, that family member is counted as part of the household and his income and resources are counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS income level applies to determine eligibility for the client or family.

R414-304-16. Aged, Blind and Disabled Institutional Family Institutional Medicaid Filing Unit.

(1) For aged, blind and disabled institutional Medicaid, the eligibility agency may not use income of the client's parents or the client's spouse to determine eligibility and the contribution to cost-of-care.

(2) For family institutional Medicaid programs, the Department adopts and incorporates by reference 45 CFR 206.10(a)(1)(vii), October 1, 2012 ed.

(3) The eligibility agency shall determine eligibility and

the contribution to cost of care, which may be referred to as a spenddown, using the income of the client and the income deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997. The eligibility agency shall end sponsor deeming when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

KEY: financial disclosures, income, budgeting
January 17, 2017 26-18-3
Notice of Continuation January 23, 2013

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-9. Trauma and EMS System Facility Designations.
R426-9-100. Authority and Purpose for Trauma System Standards.

(1) Authority - This rule is established under Title 26, Chapter 8a, 252, Statewide Trauma System, which authorizes the Department to:

(a) establish and actively supervise a statewide trauma system;

(b) establish, by rule, trauma center designation requirements and model state guidelines for triage, treatment, transport, and transfer of trauma patients to the most appropriate health care facility; and

(c) designate trauma care facilities consistent with the trauma center designation requirements and verification process established by the Department and applicable statutes.

(2) This rule provides standards for the categorization of all hospitals and the voluntary designation of Trauma Centers to assist physicians in selecting the most appropriate physician and facility based upon the nature of the patient's critical care problem and the capabilities of the facility.

(3) It is intended that the categorization process be dynamic and updated periodically to reflect changes in national standards, medical facility capabilities, and treatment processes. Also, as suggested by the Utah Medical Association, the standards are in no way to be construed as mandating the transfer of any patient contrary to the wishes of his attending physician, rather the standards serve as an expression of the type of facilities and care available in the respective hospitals for the use of physicians requesting transfer of patients requiring skills and facilities not available in their own hospitals.

R426-9-200. Trauma System Advisory Committee.

(1) The trauma system advisory committee, created pursuant to 26-8a-251, shall:

(a) be a broad and balanced representation of healthcare providers and health care delivery systems; and

(b) conduct meetings in accordance with committee procedures.

(2) The Department shall appoint committee members to serve terms from one to four years.

(3) The Department may re-appoint committee members for one additional term in the position initially appointed by the Department.

(4) Causes for removal of a committee member include the following:

(a) more than two unexcused absences from meetings within 12 calendar months;

(b) more than three excused absences from meetings within 12 calendar months;

(c) conviction of a felony; or

(d) change in organizational affiliation or employment which may affect the appropriate representation of a position on the committee for which the member was appointed.

R426-9-300. Trauma Center Categorization Guidelines.

The Department adopts as criteria for Level I, Level II, Level III, IV and Pediatric trauma center designation, compliance with national standards published in the American College of Surgeons document: Resources for Optimal Care of the Injured Patient 2014.

R426-9-400. Trauma Center Review Process.

(1) The Department shall conduct a quality review site visit of trauma centers and applicants to verify compliance with standards set in R426-9-300. In conducting each evaluation, the Department may consult with experts from the following disciplines:

(a) trauma surgery;

(b) emergency medicine;

(c) emergency or critical care nursing; and

(d) hospital administration.

(2) A consultant shall not assist the Department in evaluating a facility in which the consultant is employed, practices, or has any financial interest.

R426-9-500. Trauma Center Categorization Process.

The Department shall:

(1) Develop a survey document based upon the Trauma Center Criteria described in R426-9-300.

(2) Periodically survey all Utah hospitals which provide emergency trauma care to determine the maximum level of trauma care which each is capable of providing.

(3) Disseminate survey results to all Utah hospitals, and as appropriate, to Utah licensed ambulance providers.

R426-9-600. Trauma Center Designation Process.

(1) Hospitals seeking voluntary designation and all designated Trauma Centers desiring to remain designated, shall apply for designation by submitting the following information to the Department at least 30 days prior to the date of the scheduled site visit:

(a) a completed and signed application and appropriate fees for trauma center verification;

(b) a letter from the hospital administrator of continued commitment to comply with current trauma center designation standards as applicable to the applicant's designation level;

(c) the data specified under R426-9-7 are current;

(d) Level I and Level II Trauma Centers must submit a copy of the Pre-review Questionnaire (PRQ) from the American College of Surgeons in lieu of the application in 1a above;

(e) Level III and Level IV and Level V trauma centers must submit a complete Department approved application.

(2) Hospitals desiring to be designated as Level I and Level II Trauma Centers must be verified by the American College of Surgeons (ACS) within three (3) months of the expiration date of previous designation and must submit a copy of the full ACS report detailing the results of the ACS site visit. A Department representative must be present during the entire ACS verification or consultation visit. Hospitals desiring to be Level III or Level IV Trauma Centers must be designated by hosting a formal site visit by the Department.

(3) Hospitals not previously designated as a Level I or a Level II trauma center, applying for designation after December 31, 2016, will be considered for designation implementing the point system suggested by the American College of Surgeons as follows and using data from the Utah Trauma Registry:

(a) population as defined by the federal Office of Management and Budget total Metropolitan Statistical Area (MSA);

(i) total MSA population of less than 600,000 receives 2 points,

(ii) total MSA population of 600,000 to 1,200,000 receives 4 points,

(iii) total MSA population of 1,200,000 to 1,800,000 receives 6 points,

(iv) total MSA population of 1,800,000 to 2,400,000 receives 8 points,

(v) total MSA population of greater than 2,400,000 receives 10 points.

(b) Median Transport Times (combined air and ground -- scene only no transfer);

(i) median transport time of less than 10 minutes received 0 points,

(ii) median transport time of 10 -- 20 minutes receives 1 points,

(iii) median transport time of 21 -- 30 minutes receives 2

points,

(iv) median transport time of 31 -- 40 minutes receives 3 points,

(v) median transport time of greater than 41 minutes receives 4 points.

(c) Department/System Stakeholder/Community Support;

(i) Department support for a trauma center(if none exist)or an additional trauma center in the MSA -- 5 points,

(ii) Department position that no additional trauma centers are needed -- negative 5 points,

(iii) Trauma System Advisory Committee (or equivalent body) statement of support for a trauma center (if none exist) or an additional trauma center in the MSA -- 5 points,

(iv) community support demonstrated by letters of support from 25- 50% of city and county governing bodies within the MSA -- 1 points,

(v) community support demonstrated by letters of support from over 50% of city and county governing bodies within the MSA -- 2 points.

(d) Severely injured patients (ISS more than 15) discharged from acute care facilities not designated as Level I, II, or III trauma centers;

(i) discharges of 0-200 severely injured patients receives 0 points,

(ii) discharges of 201 -- 400 severely injured patients receives 1 points,

(iii) discharges of 401 -- 600 severely injured patients receives 2 points,

(iv) discharges of 601 -- 800 severely injured patients receives 3 points,

(v) discharges of greater than 800 severely injured patients receives 4 points.

(e) Level I Trauma Centers;

(i) for the existence of each verified Level I trauma center already in the MSA assign 1 negative point,

(ii) for the existence of each verified Level II trauma center already in the MSA assign 1 negative point,

(iii) for the existence of each verified Level III trauma center already in the MSA assign 0.5 negative points.

(f) Numbers of severely injured patients (ISS more than 15) seen in trauma centers (Level I and II) already in the MSA. The expected number of high-ISS patients is calculated as: 500 x (Number of Level I and Level II centers in the MSA) = (Expected Number of high ISS patients);

(i) if the MSA has more than 500 severely injured patients above the expected number assign 2 points,

(ii) if the MSA has 0 - 500 severely injured patients above the expected number assign 1 point,

(iii) if the MSA has 0 - 500 fewer severely injury patients than the expected number assign 1 negative point,

(iv) if the MSA has more than 500 fewer severely injured patients than the expected number assign 2 negative points.

(g) The following scoring system shall be used to allocate trauma centers within the MSAs:

(i) MSAs with scores of 5 points or less shall be allocated 1 Level I or II trauma center;

(ii) MSAs with scores of 6 - 10 points shall be allocated 2 Level I or II trauma centers;

(iii) MSAs with score of 11 - 15 points shall be allocated 3 Level I or II trauma centers;

(iv) MSAs with scores of 16 - 20 points shall be allocated 4 Level I or II trauma centers.

(h) If the number of trauma centers allocated by the model is greater than the existing number of Level I or II trauma centers in the MSA, efforts should be undertaken to recruit and designate additional trauma centers.

(i) If the number of Level I and II trauma centers allocated by the model is less than or equal to the number currently designated, the Department should not designate additional Level I or II trauma centers in the MSA.

R426-9-700. Data Requirements for an Inclusive Trauma System.

(1) All hospitals shall collect, and monthly submit to the Department, Trauma Registry information necessary to maintain an inclusive trauma system. Designated trauma centers shall provide such data in a standardized electronic format approved by the Department. The Department shall provide funds to hospitals, excluding designated trauma centers, for the data collection process. In order to ensure consistent patient data collection, a trauma patient is defined as a patient sustaining a traumatic injury and meeting the following criteria:

(a) At least one of the following injury diagnostic codes: ICD10 Diagnostic Codes: S00-S00 with 7th character modifiers of A, B, or C only, T07, T14, T20-T28 with 7th character modifier of A, T30-T32, T79.A1-T79.A9 with 7th character modifier of A excluding the following isolated injuries: S00, S10, S20, S30, S40, S50, S60, S70, S80, S90. Late effect codes, which are represented using the same range of injury diagnosis codes but with the 7th digit modifier code of D through S are also excluded; and

(b) At least one of the following patient conditions:

Stay at a hospital greater than 12 hours (as measured from the Emergency Department arrival to patient discharge); transferred in or out of reporting hospital via EMS transport (including air ambulance); death resulting from the traumatic injury (independent of hospital admission or hospital transfer status.

(c) The Department adopt by reference the National Trauma Data Standard Data Dictionary for 2016 Admissions published by the American College of Surgeons, and the Utah Trauma Registry State Required Elements for 2016 published by the Department.

R426-9-800. Trauma Triage and Transfer Guidelines.

The Department adopts by reference the 2009 Resources and Guidelines for the Triage and Transfer of Trauma Patients published by the Utah Department of Health as model guidelines for triage, transfer, and transport of trauma patients. The guidelines do not mandate the transfer of any patient contrary to the judgment of the attending physician. They are a resource for pre-hospital and hospital providers to assist in the triage, transfer and transport of trauma patients to designated trauma centers or acute care hospitals which are appropriate to adequately receive trauma patients.

R426-9-900. Noncompliance to Trauma Standards.

(1) The Department may warn, reduce, deny, suspend, revoke, or place on probation a facility designation, if the Department finds evidence that the facility has not been or will not be operated in compliance to standards adopted under R426-9-300.

(2) A hospital, clinic, health care provider, or health care delivery system may not profess or advertise to be designated as a trauma center if the Department has not designated it as such pursuant to this rule.

R426-9-1000. Resource Hospital Minimum Designation Requirements.

A Resource Hospital shall meet the following minimum requirements for designation:

(1) Be licensed in Utah or another state as a general acute hospital or be a Veteran's Administration hospital operating in Utah;

(2) Have the ability to communicate with other EMS providers operating in the area;

(3) Provide on-line medical control for all pre-hospital EMS providers who request assistance for patient care, 24

hours-a-day, seven days a week;

(4) Create and abide by written pre-hospital emergency patient care protocols for use in providing on-line medical control for pre-hospital EMS providers;

(5) Train new staff on the protocols before the new staff is permitted to provide on-line medical control and annually review protocols with physician and nursing staff;

(6) Annually provide in-service training on the protocols to all physicians and nurses who provide on-line medical control;

(7) Make the protocols immediately available to staff for reference;

(8) Provide on-line medical control which shall include:

(a) direct voice communication with a physician; or

(b) a registered nurse or physician's assistant, who shall to be licensed in Utah, who is in voice contact with a physician;

(9) Implement a quality improvement process which shall include:

(a) representatives from local EMS providers that routinely transport patients to the resource hospital;

(b) quarterly meetings; and

(c) minutes of the quality improvement meetings which are available for Department review;

(10) Identify a coordinator for the pre-hospital quality improvement process;

(11) Cooperate with the pre-hospital EMS providers' off-line medical directors in the quality review process, including granting access to hospital medical records of patients served by the particular pre-hospital EMS provider;

(12) Participate in local and regional forums for performance improvement; and

(13) Assist the Department in evaluating EMS system effectiveness by submitting to the Department, in an electronic format quarterly data specified by the Department.

(14) Designated Trauma Centers are deemed to meet the Resource Hospital standards and are exempt from requirements outlined in this section.

R426-9-1100. Stroke Treatment and Stroke Receiving Facility Minimum Designation Requirements.

(1) A Primary or Comprehensive Stroke Treatment Center or an Acute Stroke Ready Hospital shall be accredited by the Joint Commission or other nationally recognized accrediting body.

(2) A hospital designated as a Stroke Receiving Facility for receiving stroke patients via Emergency Medical Services shall meet the following requirements:

(a) Be licensed as an acute care hospital in Utah;

(b) Require physician response to the emergency department in less than thirty (30) minutes for treatment of stroke patients;

(c) Maintain the ability of physician and nursing staff to utilize a standardized assessment tool for ischemic stroke patients;

(d) Maintain and utilize approved thrombolytic medications for treatment of patients meeting criteria for administration of thrombolytic therapy;

(e) Establish a standardized acute stroke protocol and authorize appropriate emergency department staff to implement the protocol when appropriate;

(f) Have ancillary equipment and personnel available to diagnose and treat acute stroke patients in a timely manner;

(g) Establish patient transport protocols with designated stroke treatment centers;

(h) Have a performance improvement program for acute stroke care and report data as required by the Department; and

(i) Submit to a site visit by representatives of the Department.

(3) Upon designation, the Department may, in consultation with off line EMS medical direction and protocol, recommend direct transport of stroke patients to a Stroke Receiving Center or a Stroke Treatment Center by licensed ambulance provider.

R426-9-1200. Percutaneous Coronary Intervention Center Minimum Designation Requirements.

(1) A Percutaneous Coronary Intervention (PCI) Center, for the purpose of receiving acute ST-elevation myocardial infarction (STEMI) patients via an ambulance, shall meet the following minimum designation requirements:

(a) Be licensed as an acute care hospital in Utah;

(b) Maintain an emergency department staffed by at least one (1) Physician and one (1) Registered Nurse at all times;

(c) Have the ability to receive 12 lead EKG data from licensed ambulance providers transporting patients to the hospital for treatment of ST Segment Elevation Myocardial Infarction (STEMI);

(d) Maintain the ability to provide cardiac catheterization and PCI of STEMI patients within ninety (90) minutes of patient arrival in the emergency department twenty four (24) hours a day and seven (7) days a week;

(e) Maintain a performance improvement program for STEMI care and report data to the Department as required by the Department; and

(f) Submit to a site visit by representatives of the Department.

(2) Upon designation, the Department may, in consultation with offline EMS medical direction and protocol, recommend direct transport of STEMI patients to a STEMI Treatment Center by a licensed ambulance provider.

(3) The PCI designation and re-designation period shall be for a period of three years.

R426-9-1300. Patient Receiving Facility Minimum Designation Requirements.

(1) A Patient Receiving Facility shall meet the following minimum designation requirements:

(a) Have the ability to communicate with licensed and designated EMS providers;

(b) Be staffed or have on-call physician, physician assistant, or nurse practitioner availability during designated hours with a response time of less than 20 minutes;

(c) Have and maintain ACLS and PALS certification;

(d) Attend meetings of the local EMS council, if one exists, to participate in the coordination and operations of local licensed and designated EMS providers;

(e) Abide by off-line protocols approved by the licensed ambulance provider's off-line medical director;

(f) Train staff on protocols used by the licensed ambulance providers who transport patients to the Patient Receiving Facility;

(g) Implement a quality improvement process of all patients received at the patient receiving facility with the local resource hospital or trauma center including access to medical records for patients transported by ambulance;

(h) Maintain equipment, services and medications on-site to provide Advanced Life Support (ALS) intervention and appropriate treatment. Equipment and services shall include:

(i) ECG;

(ii) ACLS medications;

(iii) laboratory services;

(iv) radiology services;

(v) oxygen delivery systems;

(vi) airway support equipment and supplies;

(vii) suction equipment and supplies; and,

(i) Submit to a yearly site visit by representatives of the Department; and

(j) Submit monthly data reports to the Department on all patients received by an ambulance, and in an electronic format

provided by the Department.

(2) The Department may recommend the preferential transportation of STEMI patients by ambulance to a Patient Receiving Facility.

KEY: emergency medical services, trauma, reporting, trauma center designation
February 1, 2017 26-8a-252

R451. Heritage and Arts, Arts Council (Board of Directors of the Utah).
R451-1. Utah Arts Council General Program Rules.
R451-1-1. Utah Arts Council General Program Rules.

The Utah Arts Council shall set forth in printed and/or electronic materials: standards and procedures, eligibility requirements, fees, restrictions, panel and committee members, deadlines for submitting applications, requirements pertaining to specific opportunities, dates of events, liability, and other information which is available to the public. The Utah Arts Council has the authority to award prizes, commissions, grants and fellowships.

KEY: art in public places, art preservation, art financing, performing arts
September 12, 2003 9-6-205
Notice of Continuation January 18, 2017

R451. Heritage and Arts, Arts Council (Board of Directors of the Utah).
R451-2. Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections.
R451-2-1. Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections.

In order to maintain the quality and integrity of the Utah State Art Collections, the following policies have been adopted:

a. All works of art accepted into the Utah State Art Collections must be approved through the appropriate channels (Visual Arts Committee, Public Art Selection Committees, Folk Arts Selection Committee, etc.). This policy applies to commissions, purchases and donations of artwork. When art is added to any of the Utah State Art Collections, the Utah Arts Council will assume responsibility for cataloging, conserving, insuring, storing, and displaying that work. The criteria for selecting works for the Utah State Art Collections will be based on the quality of the work, and its role in filling historical, cultural, and stylistic gaps. Public Art commissions will be based on the aesthetic value, appropriateness to the site or facility, and budget.

b. If other state agencies are approached by an individual or organization wishing to donate a work of art, that agency may contact the Utah Arts Council to receive approval through the appropriate channels (see "a" above). If the agency does not contact the Utah Arts Council, or if the donation is not accepted by the Utah Arts Council, that agency becomes solely responsible for its ownership, including cataloging, conserving, insuring, storing, and displaying the donated work of art. The artwork will not be considered part of the Utah State Art Collections.

c. Loans of artwork from the Utah State Art Collections must be approved through appropriate channels in order for them to be insured by the state's Risk Management Division through the Utah Arts Council. Replacement value insurance for non-state agencies, by agreement or default, is borne by the institution receiving the loaned works. Works of art loaned directly to the Utah Arts Council for exhibition or other purposes are fully insured by the state's Risk Management Division through the Utah Arts Council. Public Art commissions are insured by the state's Risk Management Division through the Utah Arts Council and the host agency.

KEY: art loans, art donations, art in public places, art work
September 12, 2003 9-6-205
Notice of Continuation January 20, 2017

R495. Human Services, Administration.
R495-884. Kinship Locate.
R495-884-1. Authority and Purpose.

(1) The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules as necessary by U.C.A. 62A-11-107.

(2) The purpose of this rule is to provide information about kinship locate services including, who is authorized to request kinship locate services, what information is required to make a request, and what information may be provided from ORS.

R495-884-2. Authorized Persons.

(1) 42 USC 653 (2008) defines "authorized persons" and is incorporated by reference.

(2) ORS provides locate information to authorized persons who request location information about the parents, putative father and/or non-parental relatives of children in the custody of the Department of Child and Family Services (DCFS).

(3) An authorized person for kinship locate purposes is a State agency that administers a program under Title IV-B (Child and Family Services) or Title IV-E (Foster Care and Adoption Assistance).

R495-884-3. Requesting Kinship Locate Services.

(1) A request from an authorized person must include the following information:

(a) the child's name;
(b) the child's date of birth or social security number;
(c) the individual's name;
(d) the individual's relationship to the child; and,
(e) the individual's date of birth or social security number.

R495-884-4. Information Provided for Kinship Locate.

(1) ORS will only provide locate information found using the Federal Parent Locator Service (Federal PLS) and the State Parent Locator Services (State PLS).

(2) ORS will provide the following kinship locate information, if known, about a parent, alleged father or non-parent relative.

(a) the individual's name;
(b) the individual's social security number;
(c) the individual's most recent address; and,
(d) the individual's employer name, employer identification number (EIN), address.

(3) If a safeguard determination has been made for an individual on an ORS case, the individual's information will not be released in accordance with 45 CFR 303.21.

KEY: child support, foster care, kinship locate

August 15, 2012	**45 CFR 302.35**
Notice of Continuation January 27, 2017	**45 CFR 303.21**
	45 CFR 303.70
	42 USC 653
	62A-11-107

R501. Human Services, Administration, Administrative Services, Licensing.
R501-1. General Provisions for Licensing.
R501-1-1. Authority and Purpose.

(1) This Rule is authorized by Utah Code Title 62A, Chapter 2.

(2) This Rule clarifies the standards for:

(a) approving or denying a human services program license application;

(b) approving, renewing, extending, placing conditions on, restricting admissions, suspending, or revoking a license for a human services program;

(c) inspecting, monitoring, and investigating a prospective or current human services program; and

(d) approving or denying a variance to the Human Services Administrative Rules, Title R501, regarding the licensing of human services programs.

R501-1-2. Definitions.

As used in this Title 501:

(1) "Abuse" includes, but is not limited to:

(a) attempting to cause harm;

(b) threatening to cause harm;

(c) causing non-accidental harm;

(d) unreasonable or inappropriate use of a restraint, medication, confinement, seclusion or isolation that causes harm;

(e) sexual exploitation, as defined in 78A-6-105;

(f) sexual abuse, including sexual contact or conduct with a client, or as defined in 78A-6-105;

(g) a sexual offense, as described in Title 76 Chapter 5; or

(h) domestic violence or domestic violence related to child abuse.

(i) "Abuse" does not include the reasonable discipline of a child, or the use of reasonable and necessary force in self-defense or the defense of others, as such force is defined in 76-2-4.

(2) "Applicant" is defined in 62A-2-101.

(3) "Associated with the Licensee" is defined in 62A-2-101.

(4) "Category" means the type of human service license described in 62A-2-101.

(5) "Client" is defined in 62A-2-101.

(6) "Critical Incident" means an occurrence that involves:

(a) abuse;

(b) neglect;

(c) exploitation;

(d) death;

(e) an injury requiring medical attention beyond basic first aid;

(f) an injury that is a result of staff or client assault, restraint or intervention;

(g) the unlawful or unauthorized presence or use of alcohol or substances;

(h) the unauthorized departure of a client from the program;

(i) outbreak of a contagious illness requiring notification of the local health department;

(j) the misuse of dangerous weapons; or

(k) unsafe conditions caused by weather events, mold, infestations, or other conditions that may affect the health, safety or well-being of clients.

(7) "Director(s)" means a person or persons ultimately responsible for day to day operations of a program; and may include medical, clinical, or those directing other aspects of the program.

(8) "Exploitation" includes, but is not limited to:

(a) the use of a client's property, labor, or resources without the client's consent or in a manner that is contrary to the client's best interests, or for the personal gain of someone other than the client; such as expending a client's funds for the benefit of another; or

(b) using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, where such use is consistent with therapeutic practices; or

(c) engaging or involving a client in any sexual conduct; or

(d) any offense described in 76-5-111(4) or Section 76-5b-201 and 202.

(9) "Foster Home" is defined in 62A-2-101 (18).

(10) "Fraud" means a false or deceptive statement, act, or omission that causes, or attempts to cause, property or financial damages, or for personal or licensee gain. Fraud includes the offenses identified as fraud in Utah Code Title 76 Chapter 6.

(11) "Harm" means physical or emotional pain, damage, or injury.

(12) "Human Services Program" is defined in 62A-2-101.

(13) "Initial License means the license issued to operate a human services program during the licensee's first year of licensure. This license is considered provisional and allows for the licensee to demonstrate sustained compliance with licensing rules prior to renewal.

(14) "Inspection" means announced or unannounced visit of the licensed site in accordance with 62A-2-118.

(15) "Licensee" is defined in 62A-2-101 and includes the person or persons responsible for administration and decision making for the licensed site or program. The term licensee may be used to describe a person or entity that has caused any of the violations described in 62A-2-112 that are related to the human services program.

(16) "Local Government" is defined in 62A-2-101.

(17) "Medication-Assisted Treatment" means the use of medications with counseling and behavioral therapies to treat substance use disorders and prevent opioid overdose.

(18) "Mistreatment" means emotional or physical mistreatment:

(a) emotional mistreatment is verbal or non-verbal conduct that results in a client suffering significant mental anguish, emotional distress, fear, humiliation, or degradation; and may include demeaning, threatening, terrorizing, alienating, isolating, intimidating, or harassing a client; and

(b) physical mistreatment includes:

(i) misuse of work, exercise restraint, or seclusion as a means of coercion, punishment, or retaliation against a client, or for the convenience of the licensee, or when inconsistent with the client's treatment or service plan, health or abilities;

(ii) compelling a client to remain in an uncomfortable position or repeating physical movements to coerce, punish, or retaliate against a client, or for the convenience of the licensee;

(iii) physical punishment.

(19) "Neglect" means abandonment or the failure to provide necessary care, which may include nutrition, education, clothing, shelter, sleep, bedding, supervision, health care, hygiene, treatment, or protection from harm.

(20) "Office" means the Utah Department of Human Services Office of Licensing.

(21) "Owner/Ownership" means any licensee, person, or entity that:

(a) is defined as a "member" in 62A-2-108; or

(b) is a person or persons listed on a foster home license; or

(c) possesses the exclusive right to hold, use, benefit-from, enjoy, convey, transfer, and otherwise dispose of a program; or

(d) retains the rights, participates in, or is ultimately responsible for operations and business decisions of program, or

(e) may or may not own the real property or building

where the facility operates; or

(f) a property owner is also an owner of the program if they operate or have engaged the services of others to operate the program.

(22) "Parent Program" means an applicant or licensee owning or directing multiple sites under the same general administrative organization.

(23) "Penalty" means the Office's denying, placing conditions on, suspending, or revoking a human services license due to noncompliance with statute or administrative rules, may include penalties outlined in 62A-2-112. A penalty does not include corrective action plans as used in this rule.

(24) "Pending Renewal License" means a temporary program license status that is assigned when an expiring license has a corrective action plan, penalty, or pending appeal. Pending renewal licenses may be granted only after submission of fees and application, and are valid for no more than 12 months.

(25) "Program" refers to a Human Services Program as defined herein.

(26) "Person" means an individual, agency, association, partnership, corporation, business entity, or governmental entity.

(27) "Renewal License" means a continuing program license issued based upon ongoing compliance with administrative rules and statutes. It is issued annually or biennially in compliance with 62A-2 108(4).

(28) "Restraint" means the involuntary method of physically restricting a person's freedom of movement, physical activity, or normal access to their body.

(29) "Seclusion" means the involuntary confinement of the individual in a room or an area away from the client community, where the individual is physically prevented from leaving.

(30) "Site" means a human services program identified by a single geographic location and must be linked to the parent program, if one exists.

(31) "Staff" means direct care employees, support employees, managers, directors, supervisors, administrators, agents, volunteers, owners, and contractors.

(32) "Variance" means the Office authorized deviation from the administrative rule.

(33) "Violation" means an act or omission by the licensee, or any person associated with the licensee, contrary to any administrative regulation, or local, state, or federal law applicable to the program.

R501-1-3. Licensing Application Procedures.

(1) Initial and Renewal Application

(a) An applicant shall not accept any fees, enter any agreements to provide client services, or provide any client services until they have received a license certificate issued by the Office.

(b) Applicants and licensees shall permit the Office to have immediate, unrestricted access to the site, all on and off-site program and client records, and all staff and clients.

(c) An applicant may withdraw their application for a license, in writing, at any time during the application process.

(d) An applicant seeking an initial or renewal license to operate a human services program shall submit:

(i) an application as provided by the Office; a renewal application that is not submitted at least thirty days prior to the expiration date of the current license may result in the license expiring;

(ii) the fee(s) required for each category of human service program license(s); except as excluded in R501-1-7-2;

(iii) a completed background screening application, fees and supporting documentation for each person associated with the human services program in accordance with 62A-2-120 and R501-14, except for those excluded in 62A-2-120(13);

(iv) the applicant's required policies and procedures per R-501-2. Renewal applicants may submit modifications made to previously submitted policies and procedures;

(v) name and contact information for all owners and directors, as defined in this chapter;

(vi) disclosure of any individual associated with the application who has been a licensee as defined in this rule that had a license revoked by the Office within the five years prior to the date on the application; and;

(vii) documentation verifying compliance with, or exemption from, local government zoning, health, fire, safety, and business license requirements.

(A) For residential treatment programs applying for initial licensure, a copy of its notice of intent to operate a residential treatment program, and proof of service, in accordance with 62A-2-108.2.

(2) Application Expiration

(a) A program initial application, other than an initial foster home application, that remains incomplete shall expire one year from the date it was first submitted to the Office.

(b) A foster home initial application that remains incomplete, or lacks required documentation may expire 90 days from the date is was first submitted to the Office unless the Office determines the applicant to be making active progress toward licensing compliance.

(c) An expired initial application is void and requires a new initial application and applicable fees for each category of license.

(3) Two Year Licenses

(a) A program may apply for a two year license if:

(i) the program has been licensed consecutively without penalty for two years prior to application;

(ii) there are no current corrective action plans, penalties or pending appeals at the time of application;

(iii) the program submits double the annual fees for their category/categories of licenses; and

(iv) the program submits a plan for maintaining continued compliance with background screenings as described in 62A-2-120.

R501-1-4. Licensing Determinations.

(1) Application Approval

(a) The Office shall issue a license for a human service program only after verifying compliance with applicable administrative rules and statutes.

(b) The Office may place individualized parameters on a program license in order to promote the health, safety, and welfare of clients. Such parameters may include, but are not limited to:

(i) age restrictions;

(ii) admission or placement restrictions; or

(iii) other parameters specific to individual sites and programs.

(c) A license certificate shall state the name, site address, license category, maximum client capacity if applicable, any specific parameters, and effective dates of the license.

(d) Licensee shall post the license certificate in a conspicuous location at the licensed site.

(e) A program shall not be issued an initial license while any other license within that program or parent program is under penalty, or has a pending appeal.

(2) Application Denial

(a) The Office may deny the application for a human service program if:

(i) the program has failed to achieve and maintain compliance with administrative rules and statutes. All inspections, investigations, and other information gathered during the licensed period shall contribute to the renewal determination;

(ii) the Office determines that, the program is not reasonably likely to provide services in accordance with

governing rules or statutes. The Office may consider the history of rule violations by the owner, licensee, or persons associated with the program; or

(iii) the Office determines that significant false or misleading information regarding the program has been provided to the Office, program clients, prospective clients, or the public.

(b) Previously denied applicants shall not reapply for at least three months from the date of denial.

(3) Renewing a License with Violations

(a) If a license has a penalty, pending appeal, or corrective action plan at the time of renewal, the license shall not be renewed per 62A-2-108(4), but shall be put in a pending renewal status until compliance or other resolution is achieved. Pending renewal status:

(i) provides an opportunity for the licensee to achieve compliance and qualify for full renewal per 62A-2-108(4);

(ii) is only issued after submission of renewal application and fees;

(iii) is valid for up to 12 months of the requested renewal period, and cannot be extended;

(iv) may be converted to a regular renewal license for the balance of the renewal period once compliance is verified; and

(v) will be designated on the license certificate.

(b) A license that does not achieve compliance or other resolution in that time shall be denied further renewal.

R501-1-5. Expiration, Extension, and Relinquishment.

(1) License Expiration

(a) A license that has expired is void and may not be renewed.

(b) A license expires at midnight on the expiration date listed on the license that is issued by the Office, unless:

(i) the license has been revoked by the Office,

(ii) the license has been extended by the Office,

(iii) the license has been placed in pending renewal status by the Office in accordance with 501-1-4-3, or

(iv) the license has been relinquished by the licensee.

(c) A program with an expired license shall not accept any fees, enter any agreements to provide client services, or provide any client services.

(d) A program with an expired license wishing to operate a human services program shall submit an application for an initial license in accordance with this rule.

(2) License Extension

(a) The Office may extend the current license of a human service program only when the renewal application and applicable fee have been submitted.

(b) A license may be extended one time, up to a maximum of 90 days past the current license expiration date, only if the Office determines there is a reasonable likelihood the program will achieve compliance prior to the expiration of the extension, and there are not current penalties or pending appeals.

(c) The application for a license that has been extended, but does not qualify for renewal within the timeframe of the extension, shall be denied.

(3) License Relinquishment; A licensee wishing to voluntarily relinquish its license shall submit a written notice to the Office.

R501-1-6. Program Changes.

(1) Name Change

(a) A licensee wishing to change only the name of the program or site does not need to submit an application or fee; they shall submit updated program documentation reflecting the new name to the Office at least ten days prior to the change.

(b) The Office may link the name of the former program to the new name on the licensing database, and on all license certificates and public websites, for two years following the change.

(2) Relocation

(a) A human services program wishing to relocate to a new address may serve clients at the new site, only after:

(i) submission of renewal application and renewal fees at least 30 days prior to the move;

(ii) submission of local government business license and applicable inspections and clearances, including but not limited to:

(A) health;

(B) fire; and/or

(C) as categorically required;

(iii) submission of insurance coverage at the new site,;

(iv) inspection by the Office; and

(v) receipt of the updated license certificate for the new site.

(b) A foster home that intends to relocate to a new site may have their license transferred to the new site only after:

(i) a request to relocate has been submitted to the Office at least 30 days prior to the move;

(ii) Office of Licensing inspection and approval of licensure at the new site which shall occur within two weeks, if a foster child is placed, and within 30 days if there are no current foster placements;

(A) if a foster child is placed, it is the responsibility of the licensed foster parent to ensure health and safety of the foster child during the transfer to the new site.

(c) Except for foster homes outlined in subsection (b), no clients may be present and no services may be provided at a relocation address until after the Office issues a new license in accordance with this Rule.

(3) Capacity Change

(a) A licensee seeking to increase the maximum client capacity of a program shall submit an application and renewal fee for a license renewal as categorically required.

(4) Add New License Category

(a) A program may request to add a new category of service to an existing licensed site by submitting application and fees for an initial license. All requirements for initial licensure must be verified.

(5) Add New Location

(a) A program may add an additional site of service by submitting an application and fees for an initial license. All requirements for initial licensure must be verified.

(6) Owner/Ownership Changes

(a) A program anticipating, or undergoing a change of ownership, or change in owner(s), shall submit in writing, prior to the change:

(i) any changes to the programming and services;

(ii) declaration regarding responsibility for records and records retention to include an agreement signed by both current and prospective owners and/or directors, detailing how all program staff and client records will be retained and remain available to the Office;

(iii) names and contact information of any new directors or owners;

(iv) documentation of continuous insurance coverage;

(v) updated business license.

(b) The status of a license at the time of a change of ownership shall continue.

(7) For any substantial change in this section, the Office may require new, initial application and fees for each license category.

(a) Substantial changes include:

(i) those resulting in direct client impact;

(ii) changes to programming;

(iii) changes in populations served;

(iv) severing ties with previous owner or staff affiliations; or

(v) disrupting continuity of record retention, etc.

R501-1-7. License Fees.

(1) The Office shall collect licensing fees in accordance with 62A-2-106, and Utah Code Title 63J Chapter 1 Part 5.

(2) No licensing fee shall be required from a foster home, or a Division, or Office, of the Department of Human Services.

(3) The Office is not required to perform an on-site visit, or document review until the applicant pays the licensing fee.

(4) A license application fee will expire after 12 months if a program has been unable to meet the license requirements.

(5) A fee shall not be transferred, prorated, reduced, waived, or refunded. Costs incurred by applicants in preparation for, or maintenance of licensure are the sole responsibility of the applicant.

(6) Separate initial license fees are required for each new category of human services program offered at each program site.

(7) Separate renewal license fees, and applicable capacity fees, are required for each license category that is renewed at each program site.

(a) Capacity fees are calculated according to the maximum licensed client capacity of the human service program, and not according to the number of clients actually served in the program.

(8) A human service program with more than one building, unit, or suite at one site, may choose to have its fees assessed and each category of license issued:

(a) so that each category of license will be issued to include all on-site buildings, units or suites as one; or

(b) so that separate licenses will be issued for each individual on-site building, unit or suite.

R501-1-8. Variances.

(1) A licensee shall not deviate from any administrative rule without first receiving written approval of a specific variance request signed by the Director of the Office, or the director's designee.

(2) The director of the Office, or the director's designee, may grant a variance if the director or the Director's designee determines a variance is not likely to compromise client health and safety, or provide opportunity for abuse, neglect, exploitation, harm, mistreatment, or fraud.

(3) A licensee seeking a variance must submit a written request to their licensing specialist, and specifically describe:

(a) the rule for which the variance is requested;

(b) the reason for the request;

(c) how the variance provides for the best interest of the client(s);

(d) what procedures will be implemented to ensure the health and safety of all clients; and

(e) the proposed variance start and expiration dates.

(4) The Office shall review the variance and notify the licensee of the approval, approval with modification, or denial of the variance, in writing, within 30 days.

(5) The licensee shall comply with the terms of a written variance, including any conditions or modifications contained within the approved written variance.

(6) A variance expires on the end date listed on the approval notice and terms of the variance are no longer permitted after that expiration date, unless a renewal of the variance is granted.

(7) A variance may be renewed by the office when the program is able to justify the request, and ensure ongoing health and safety of all clients.

R501-1-9. Monitoring.

(1) The Office shall conduct a minimum of one annual on-site inspection, but may conduct as many announced, or unannounced inspections as deemed necessary to monitor compliance, investigate alleged violations, monitor corrective action plans or penalty compliance, or to gather information for license renewal.

(2) On-site inspections shall take place during regular business hours, as defined in 62A-2-101.

(3) Applicants and licensees shall not restrict the Office's access to the site, clients, staff, and all program records.

(4) Licensees and staff shall not compromise the integrity of the Office's information gathering process by withholding or manipulating information, or influencing the specific responses of staff or clients.

(5) All on-site inspections shall contribute toward the renewal or denial of the license application at the end of the license period.

(6) The Office shall provide written findings to the Program identifying areas of non-compliance with licensing requirements after each on-site inspection.

(7) Except for reports made in relation to foster homes, the licensee shall make copies of inspection reports available to the public upon request per 62A-2-118(5).

(8) The Office may adopt a written inspection report from a local government, certifying, contracting, or accrediting entity to assist in a determination whether a licensee has complied with a licensing requirement.

(9) The Office shall be allowed access to all program documentation and staff that may be located at an administrative location, away from the licensed site.

R501-1-10. Investigations of Alleged Violations.

(1) Unlicensed Programs

(a) The Office shall investigate reports of unlicensed human service programs.

(b) Investigation of an unlicensed human service program may include interviewing anyone at the site, neighbors, or gathering information from any source that will aid the Office in making a determination as to whether or not the site should be licensed.

(c) An unlicensed human services program that meets licensure definition, but does not submit an application and fee, or fails to become licensed, shall be referred to the Office of the Attorney General, and the appropriate County Attorney.

(d) The Office may penalize a licensed program at all program sites when a program adds or operates an unlicensed site that requires licensure by the Office.

(2) Licensed Program Complaints and Critical Incidents

(a) The Office shall investigate critical incidents and complaints involving alleged licensing violations regarding a licensed human services program.

(b) Complaints about licensees can come to the Office via any means from any source.

(c) The Office retains discretion to decline investigation of a complaint that is anonymous, unrelated to current conditions of the program, or not an alleged violation of a rule or statute.

(d) Critical incidents shall be reported by the program to the Office by the end of the following business day, to legal guardians of involved clients, and to any other agencies as required by law, including:

(i) Child and Adult Protective Services; or

(ii) Law Enforcement.

(e) Pending investigations or those that result in no rule violation findings in regards to the complaints or critical incidents shall be classified as protected and only released in accordance with Utah Code title 63G chapter 2, Utah Government Access and Management Act.

(3) Investigative Process

(a) In-person, or electronic investigations may include, but are not limited to:

(i) a review of on or offsite records;

(ii) interviews of licensee(s), person(s), client(s), or staff;
(iii) the gathering of information from collateral parties; or
(iv) site inspections.
(b) The Office will prioritize investigations of reports of unlicensed programs, complaints regarding licensed programs, and critical incidents following an assessment of risk to client health and safety as follows:
(i) priority allegations, as administratively identified by the Office as a potential imminent risk to the health and safety of clients, will require initial on-site contact by the Office within three business days. The Office may utilize law enforcement, Child or Adult Protective services, or other protection agencies to meet priority in on-site response;
(ii) all other allegations will require that the Office initiate an investigation within ten business days.
(c) Licensees and staff shall cooperate in any investigation.
(d) The Office may report any allegations or evidence of abuse, neglect, exploitation, mistreatment, or fraud to clients, clients' legal guardians, law enforcement, insurance agencies, the insurance department, the Division of Occupational and Professional Licensing, or any other entity determined necessary by the Office.

R501-1-11. License Violations.
When the Office finds evidence of violations of statute or rule, the Office shall do one of the following:
(1) provide written notification of the violation requiring the licensee to correct violation(s) with no formal follow-up; or
(2) provide written notification of violation and request a licensee to submit a corrective action plan in response to a written notification of a violation;
(a) a licensee shall submit a written corrective action plan to the Office within ten calendar days of the request from the Office and the corrective action plan shall include:
(b) a statement of each violation identified by the Office;
(c) a detailed description of how the licensee will correct each violation and prevent additional violations;
(d) the date by which the licensee will achieve compliance with administrative rules and statutes; and
(e) the signature of program owners and directors, including each foster parent, if involving a licensed or certified foster home;
(i) the Office shall review the submitted corrective action plan and:
(A) inform the licensee that the corrective action plan is approved; or
(B) inform the licensee that the corrective action plan is not approved and provide explanation;
(ii) the Office may permit a licensee to amend and resubmit its corrective action plan within five additional calendar days;
(f) the Office shall issue a Notice of Agency Action imposing a penalty for violation(s) if the licensee fails to submit and comply with an approved corrective action plan.
(g) A corrective action plan is not a penalty. Programs have the right to refuse the corrective action plan process and may preserve their appeal rights by requesting a penalty through an Office initiated Notice of Agency Action.
(3) provide a written notice of agency action initiating a penalty, as follows:
(a) the Office may place a license on conditional status. Conditional status allows a program that is in the process of correcting violations to continue operation, subject to conditions established by the Office. Failure to meet the terms of the conditions, and time frames outlined on the notice, could result in further penalty;
(b) the Office may suspend a license for up to one year;
(i) a human services program that has had its license suspended is prohibited from accepting new clients, and may only provide the services necessary to maintain client health and safety during their transition; and
(ii) shall have and comply with written policies and procedures to transition clients into equivalent, safe, currently licensed programs or into the custody of their legal guardians;
(c) the Office may revoke a license;
(i) a human services program that has had its license revoked is prohibited from accepting new clients and may only provide the services necessary to maintain client health and safety during their transition, and
(A) shall have and comply with written policies and procedures to transition clients into equivalent, safe, currently licensed program or into the custody of their legal guardians;
(B) Names of licensees and programs who have had their licenses revoked shall be maintained by the Office for a period of five years, and shall not be associated in any way with a licensed program during that five-year period.
(d) A licensee whose license has been suspended or revoked is responsible for the program staffing and health and safety need of all clients while the suspension or revocation is pending.
(e) The Office may place conditions, such as restricted admissions, to be in immediate effect in the Notice of Agency Action, if necessary, to protect the health and safety of clients.
(f) The Office may utilize any other penalties pursuant to 62A-2, Subsections 112, 113 and/or 116.
(g) The Office may consider chronicity, severity, and pervasiveness of violations when determining whether to simply provide notification of violations with no follow-up requirement; to request a corrective action plan; or to apply a formal penalty to the program.
(h) Repeated violations of the same rule or statute, or failure to comply with conditions of a Notice of Agency Action may elevate the penalty level assessed.
(i) A licensee shall post the Notice of Agency Action on-site, and on the homepage of each of its websites, where it can be easily reviewed by all clients, guardians of clients, and visitors within five business days, and shall remain posted for 90 days, unless otherwise noted by the Office.
(j) A licensee shall notify all clients, guardians and prospective clients of a Notice of Agency Action issued by the Office within five business days. Prospective and new clients will be notified for as long as the Notice of Agency Action is in effect.
(k) Pending an appeal of a revocation, suspension or conditional license that restricts admissions, licensee shall not accept any new clients as outlined on the Notice of Agency Action, or while an appeal of a penalty is pending without prior written authorization from the Office.
(l) The Office shall electronically post Notices of Agency Action issued to a human services program, on the Office's website, in accordance with 62A-2-106.
(m) Due Process: A Notice of Agency Action shall inform the applicant or licensee of the right to appeal in accordance with Administrative Rule 497-100.

R501-1-12. Licensing Code of Conduct and Client Rights.
(1) Licensees and staff shall:
(a) accurately represent services, policies and procedures to clients, guardians, prospective clients, and the public;
(b) create, maintain, and comply with a written policy that addresses the appropriate treatment of clients, to include the rights of clients as outlined in this section;
(c) not abuse, neglect, harm, exploit, mistreat, or act in a way that compromises the health and safety of clients through acts or omissions, by encouraging others to act, or by failing to deter others from acting;
(d) not use or permit the use of corporal punishment and shall only utilize restraint as described in R501-2;

(e) maintain the health and safety of clients in all program services and activities, whether on or offsite;

(f) not commit fraud;

(g) provide an insurer the licensee's records related to any services or supplies billed, upon request by an insurer or the Office;

(h) require that any licensee or staff member who is aware of, or suspects abuse, neglect, mistreatment, fraud, or exploitation shall ensure that a report is made to the Office and applicable investigative agencies as outlined in R501-1-10-2, and in compliance with mandatory reporting laws, including 62A-4a-403 and 62A-3-305;

(i) any licensee or staff member who is aware of, or suspects a violation of this rule, shall ensure that a report is made to the Office of Licensing at 801-538-4242 or directly to the licensor of the specific program or site; and

(j) provide services and supervision that is commensurate with the skills, abilities, behaviors, and needs of each client.

(2) Clients have the right to:

(a) be treated with dignity;

(b) be free from potential harm or acts of violence;

(c) be free from discrimination;

(d) be free from abuse, neglect, mistreatment, exploitation, and fraud;

(e) privacy of current and closed records;

(f) communicate and visit with family, attorney, clergy, physician, counselor, or case manager, unless therapeutically contraindicated or court restricted;

(g) be informed of agency policies and procedures that affect client or guardian's ability to make informed decisions regarding client care, to include:

(i) program expectations, requirements, mandatory or voluntary aspects of the program;

(ii) consequences for non-compliance;

(iii) reasons for involuntary termination from the program and criteria for re-admission;

(iv) program service fees and billing; and

(v) safety and characteristics of the physical environment where services will be provided.

(3) clients shall be informed of these rights and a copy signed by the client or guardian shall be maintained in the client file.

(4) licensees shall train all staff annually on agency policies and procedures, Licensing rules, and the Licensing Code of Conduct. A document verifying this training shall be signed and dated by the trainer and staff member and maintained in the staff personnel file.

R501-1-13. Compliance.

(1) A licensee that is in operation on the effective date of this rule shall be given 60 days to achieve compliance with this rule.

KEY: licensing, human services
January 17, 2017 62A-2-101 et seq.
Notice of Continuation October 18, 2012

R501. Human Services, Administration, Administrative Services, Licensing.
R501-14. Human Service Program Background Screening.
R501-14-1. Authority and Purpose.

(1) This Rule is authorized by Sections 62A-2-106, 62A-2-120, 62A-2-121, and 62A-2-122.

(2) This Rule clarifies the standards for approving, denying, or revoking an applicant's background screening.

R501-14-2. Definitions.

(1) "Abuse" is defined in Sections 78A-6-105 and 62A-3-301, and may include "severe abuse", "severe neglect", and "sexual abuse", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(2) "Applicant" means a person whose identifying information is submitted to the Office under Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-128, and 78B-6-113. Applicant includes the legal guardian of an individual described in Section 62A-2-120-1.a.

(3) "Background Screening Agent" means the applicable licensing specialist, human services program, Area Agency on Aging (for Personal Care Attendant applicants only), or DHS Division or Office.

(4) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(5) "Child" is defined in Section 62A-2-101.

(6) "Child Placing" is defined in Section 62A-2-101.

(7) "Comprehensive Review Committee" means the Committee appointed to conduct reviews in accordance with Section 62A-2-120.

(8) "DAAS Statewide Database" is the Division of Aging and Adult Services database created by Section 62A-3-311.1 to maintain reports of vulnerable adult abuse, neglect, or exploitation.

(9) "Direct Access" is defined in Section 62A-2-101.

(10) "Direct Service Worker" is defined in Section 62A-5-101.

(11) "Directly Supervised" is defined in 62A-2-101.

(12) "Expiration date" is 395 days from the approval date of the current screening application, or one year from the current license start date, whichever is longer. In the event that a human services program or department contractor has more than one license, the current license start date means the earliest current license start date. A background screening approval that has expired is void.

(13) "FBI Rap Back System" is defined in Section 53-10-108.

(14) "Fingerprints" means an individual's fingerprints as copied electronically through a fingerprint scanning device or on two ten-print fingerprint cards by a law enforcement agency, an agency approved by the BCI, or Background Screening Agent.

(15) "Foster Home" is defined in Section 62A-2-101.

(16) "Human Services Program" is defined in Section 62A-2-101.

(17) "Licensee" is defined in Section 62A-2-101.

(18) "Licensing Information System" is created by Section 62A-4a-1006, as a sub-part of the Division of Child and Family Services' Management Information System created by Section 62A-4a-1003.

(19) "Neglect" may include "severe neglect", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(20) "Office" means the Office of Licensing within the Utah Department of Human Services.

(21) "Personal Care Attendant" is defined in Section 62A-3-101.

(22) "Personal Identifying Information" is defined in Section 62A-2-120, and shall include:

(a) a current, valid state driver's license or state identification card bearing the applicant's photo, current name, and address;

(b) any current, valid government-issued identification card bearing the applicant's name and photo, including passports, military identification and foreign government identification cards; or

(c) other records specifically requested in writing by the Office.

(23) "Substance Abuse Treatment Program" is defined in Section 62A-2-101.

(24) "Substantiated" is defined in Section 62A-4a-101.

(25) "Supported" is defined in Sections 62A-3-301 and 62A-4a-101.

(26) "Vulnerable Adult" is defined in Section 62A-2-101.

(27) "WIN Database" is defined in Section 53-10-108, and includes information from Alaska, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

R501-14-3. Initial Background Screening Procedure.

(1) An applicant for initial background screening shall legibly complete, date and sign a background screening application and consent on a form provided by the Office.

(2) An applicant shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application. The applicant may provide disclosure statements and related documents as direct attachments to the application or directly attached in a sealed envelope. If the applicant submits a sealed envelope, the Background Screening Agent shall forward it unopened.

(3) An applicant who presents only a foreign country identification card shall:

(a) enroll in the FBI Rap Back System; and

(b) submit an original or certified copy of a government-issued criminal history report from that country.

(4) An applicant who presents only a US passport or state issued identification card from any state other than Utah, Alaska, Idaho, Montana, Nevada, Oregon, Washington, and Wyoming shall:

(a) enroll in the FBI Rap Back System.

(5) The background screening application, personal identifying information, including fingerprints, and applicable fee shall be submitted to the Background Screening Agent. The Background Screening Agent shall:

(a) inspect the applicant's government-issued identification card and determine that it does not appear to have been forged or altered;

(b) review and sign the application; and

(c) forward the background screening application, and applicable fee to the Office background screening unit.

R501-14-4. Renewal Background Screening Procedure.

(1) An applicant for background screening renewal shall legibly complete, date and sign a background screening application and consent on a form provided by the Office.

(2) An applicant shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application. The applicant may provide disclosure statements and related documents as direct attachments to the application or directly attached in a sealed envelope. If the applicant submits a sealed envelope, the Background Screening Agent shall forward it unopened.

(3) The background screening application, personal identifying information, and applicable fee shall be submitted to the Background Screening Agent.

(a) Notwithstanding R501-14-4(3), an applicant for a

background screening renewal who is not currently enrolled in the FBI Rap Back System is not required to submit fingerprints for a FBI Rap Back System search and applicable FBI Rap Back System fees unless:

(i) the applicant's most current background screening has expired;

(ii) the human services program or Background Screening Agent with which the applicant is associated requires a FBI Rap Back System search;

(iii) the applicant wishes to provide services with another licensee and has not submitted fingerprints for a FBI Rap Back System search and applicable FBI Rap Back System fees;

(iv) the applicant does not present a current, valid identification card issued by the State of Utah; or

(v) the renewal application is submitted on or after July 1, 2017 and the applicant is not already enrolled in the FBI Rap Back System.

(4) A licensed human services program or department contractor wishing to submit background screening renewal applications for multiple applicants may submit a summary log of the renewing applicants in lieu of individuals' applications.

(a) A summary log may only be used for applicants:

(i) who are enrolled in the FBI Rap Back System with the Office;

(ii) with a current, non-expired approval;

(iii) whose name and address have not changed since their last background screening approval;

(iv) who have not had any of the following since their last background screening approval:

(A) criminal arrests or charges;

(B) supported or substantiated findings of abuse, neglect or exploitation; or

(C) any pending or unresolved criminal issues.

(b) Summary logs shall contain:

(i) applicant name,

(ii) applicant date of birth,

(iii) the last four numbers of each applicant's social security number;

(iv) program name; and

(v) name of program representative completing summary form.

(c) A Background Screening Agent program choosing to submit a summary log of the renewing applicants in lieu of individuals' applications shall maintain documentation signed by each applicant, in which they attest to the accuracy of the information described in R501-14-4(4)(a) and (b).

(5) An application shall be submitted each time an applicant may have direct access to a child or vulnerable adult at any human services program other than the program identified on the initial application.

(6) The Background Screening Agent shall:

(a) inspect the applicant's government-issued identification card and make a determination as to whether or not it appears to have been forged or altered;

(b) review and sign the application; and

(c) forward the background screening application, and applicable fee to the Office background screening unit within 30 calendar days after the applicant completes and signs the application and no later than 15 calendar days preceding the background screening expiration date.

R501-14-5. General Background Screening Procedure.

(1) An application that is illegible, incomplete, unsigned, undated, or lacks a signed consent or required identifying information, may be returned to the individual who submitted it without further action.

(a) Personal identifying information submitted pursuant to Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-113, and 78B-6-128 shall be used to perform a search in accordance with Sections 62A-2-120(3) and (13).

(2) Except as permitted by Section 62A-2-120(9), an applicant for an initial background screening shall have no direct access to a child or vulnerable adult prior to receiving written confirmation of background screening approval from the Office.

(a) Except as permitted by Section 62A-2-120(9), an applicant seeking background screening renewal shall have no direct access to a child or vulnerable adult after the background screening expiration date and prior to receiving written confirmation of background screening approval from the Office.

(3) The Office may defer action on an application for up to 30 calendar days until the applicant submits all additional information required by the Office.

(a) The Office may deny an application in the event that an applicant fails to provide all additional information required by the Office.

(b) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access to clients unless the Office approves a subsequent application.

(4) The Office may provide written communication notifying the program that the applicant must:

(a) submit fingerprints for a FBI Rap Back System check within 15 calendar days of a letter of notification; and/or

(b) obtain and submit a certified copy of the applicant's criminal history or records from local, state, federal, or foreign officials within 30 calendar days of a letter of notification.

(5) Upon notification from the Office as described in R501-14-5(4), the Background Screening Agent shall provide the applicant with a copy of all written communication from the Office within five calendar days after the date it is received.

(6) If the Office sends an applicant a sealed letter in care of or via the Background Screening Agent, the letter shall be provided to the applicant unopened.

(7) The applicant shall promptly notify the Office of any change of address while the application remains pending.

(8) A Background Screening Agent may roll fingerprints of applicants for submission to the Office only after it has received and applied training in the proper methods of taking fingerprints.

(a) The Background Screening Agent shall verify the identity of the applicant via government-issued identification card at the time that fingerprints are taken.

(b) In the event that 10% or more of the fingerprints submitted by a Background Screening Agent are rejected for quality purposes, the Office may thereafter require that a program utilize law enforcement or BCI to roll prints.

(c) An applicant or Background Screening Agent is not required, but may opt to, submit fingerprints for minors.

R501-14-6. Background Screening Fees.

(1) The applicant and Background Screening Agent are responsible for ensuring the accuracy of information submitted with fee payments.

(2) Fees shall only be made by cashiers' check, corporate check, money order, or internal DHS transfer. Personal checks and credit or debit card payments shall not be accepted.

(3) A Background Screening Agent may choose to submit one payment for any number of applicants.

(4) Fees are not refundable or transferable for any reason.

R501-14-7. Results of Screening.

(1) The Office shall approve an application for background screening in accordance with Section 62A-2-120(7).

(a) The Office shall notify the applicant or the Background Screening Agent or contractor when an applicant's background screening application is approved.

(i) Upon receiving notice from the Office, the Background Screening Agent shall provide notice of approval to the applicant as required under Section 62A-2-120 (12)(a)(i).

(b) The approval granted by the Office shall be valid for a period not to exceed 395 days from the date of approval.

(c) An approval granted by the Office shall not be transferable, except as provided in R501-14-11.

(2) The Office may conditionally approve an application for background screening in accordance with Section 62A-2-120(8).

(a) Conditional approvals are prohibited for initial applicants who are residents of child placing foster or adoption homes.

(b) A program seeking the conditional approval of an applicant shall not request conditional approval unless 10 business days have passed after the applicant's background screening application is received by the Office without receiving notification of the approval or denial of the application.

(c) A written request for conditional approval shall include the applicant's full name, the last four digits of the applicant's social security number, and the date the application was submitted to the Office.

(d) Upon receipt of a written request for conditional approval that complies with R501-14-7(2)(b), the Office shall make a conditional determination within three business days.

(e) If the Office does not provide a standard approval before the expiration date of the conditional approval, the applicant shall have no unsupervised direct access.

(f) The Office may revoke the conditional approval prior to the expiration date.

(3) The Office shall deny an application for background screening in accordance with Section 62A-2-120.

(4) An applicant whose background screening has been denied shall have no further direct access.

(5) The Office shall refer an application to the Comprehensive Review Committee in accordance with Section 62A-2-120(6).

(a) Per Section 62A-2-120 (6)(a)(ii), all misdemeanor convictions except those listed in R501-14-7(5)(b), within the five years prior to submission of the application to the Office shall be reviewed by the Comprehensive Review Committee.

(b) The following misdemeanors will be reviewed only if there have been three or more convictions for any of the following misdemeanors within the five years prior to the application with the Office:

(i) violation of local ordinances related to animal licenses, dogs at large, noise, yard sales, land uses, storm water, utilities, business licenses, zoning, building, construction and park/access hours;

(ii) all misdemeanors listed in 41-6a except:

(A) part 4 accident responsibility;

(B) part 5 driving under the influence;

(C) part 17 miscellaneous rules;

(D) part 18 motor vehicle safety belt usage act;

(iii) all misdemeanors listed in 76-10-2, 76-10-21 and 76-10-27;

(iv) Failure to Appear: A misdemeanor charge under 77-7-22;

(v) Unauthorized Hunting of Protected Wildlife: A misdemeanor resulting from unauthorized hunting under 23-20-3;

(vi) Fishing Licenses: A misdemeanor resulting from a failure to have the appropriate fishing license under 23-19-1;

(vii) Boating Safety: A misdemeanor resulting from a failure to comply with the boating safety requirements outlined in 73-18-8;

(viii) Business License: A misdemeanor resulting from failure to have a business license as required under 76-8-410;

(xiv) all juvenile misdemeanors except those listed in 62A-2-120(5)(a) unless there is a pattern of at least three or more similar offenses within the five years prior to the submission of the application.

(c) The Office shall refer an applicant to the Comprehensive Review Committee upon learning of a potentially disqualifying offense or finding described in Section 62A-2-120(6)(a) not previously considered by the Comprehensive Review Committee.

(d) If an offense requires committee review, the Comprehensive Review Committee may review all convictions related to the applicant's criminal history.

R501-14-8. Comprehensive Review Committee.

(1) The Director of the following Department of Human Services divisions and offices shall appoint one member and one alternate to serve on the Comprehensive Review Committee:

(a) the Executive Director's Office;

(b) the Division of Aging and Adult Services;

(c) the Division of Child and Family Services;

(d) the Division of Juvenile Justice Services;

(e) the Division of Services for People with Disabilities;

(f) the Division of Substance Abuse and Mental Health; and

(g) the Office of Licensing.

(2) Comprehensive Review Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office member shall chair the Comprehensive Review Committee as a non-voting member.

(4) Five voting members shall constitute a quorum.

(5) The Comprehensive Review Committee shall conduct a comprehensive review of an applicant's background screening application, criminal history records, abuse, neglect or exploitation records, and related circumstances, in accordance with Section 62A-2-120(6).

R501-14-9. Comprehensive Review Investigation.

(1) The Comprehensive Review Committee shall not deny a background screening application without the Office first sending the applicant a written notice that:

(a) the Office is investigating the applicant's criminal history or findings of abuse, neglect or exploitation;

(b) the applicant is encouraged to submit any written statements or records that the applicant wants the Comprehensive Review Committee to consider;

(c) the Comprehensive Review Committee evaluates information using the criteria established by Section 62A-2-120(6)(b), and the applicant may specifically address these issues; and

(d) submissions must be received within 15 calendar days of the written notice.

(2)(a) The Office shall gather information described in Section 62A-2-120(6)(b) and provide available information to the Comprehensive Review Committee.

(b) The Office may request additional information from any available source, including the applicant, victims, witnesses, investigators, the criminal justice system, law enforcement agencies, the courts and any others it deems necessary for the comprehensive evaluation of an application.

(i) The Office may defer action on an application for up to 30 calendar days until the applicant submits all additional information required by the Office.

(ii) The Office may deny an application in the event that an applicant fails to provide all additional information required by the Office.

(iii) An applicant whose background screening has been denied shall have no supervised or unsupervised direct access unless the Office approves a subsequent application by the

invidivdual.

R501-14-10. Comprehensive Review Determination.

(1) The Comprehensive Review Committee shall only consider applications and information presented by the Office. The Comprehensive Review Committee shall evaluate the information provided by the Office and any information provided by the applicant.

(a) A background screening approval may be transferred to other human service programs, therefore the Comprehensive Review Committee shall evaluate whether direct access should be authorized for all types of programs.

(2) Each application that goes to the Comprehensive Review Committee requires individual review by the Comprehensive Review Committee.

(3) The Comprehensive Review Committee shall recommend approval of the background screening of an applicant only after a simple majority of the voting members of the Comprehensive Review Committee determines that approval will not likely create a risk of harm to a child or vulnerable adult.

(4) The Comprehensive Review Committee shall recommend denial of the background screening of an applicant when it finds that approval will likely create a risk of harm to a child or vulnerable adult.

(5) The Office shall approve or deny the applicant's background screening application in accordance with the recommendation of the Comprehensive Review Committee, except as described below:

(a) Within 10 days, a Comprehensive Review Committee member or the Office may request an additional Committee review based on the need for additional information, legal review or clarification of statutes, rules or procedures.

(b) Following a subsequent Committee review, the Office shall:

(i) approve or deny the applicant's background screening application in accordance with the recommendation of the Comprehensive Review Committee, and

(ii) send written notification to the applicant or Background Screening Agent.

(6) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access.

R501-14-11 Background Screening Approval Transfer or Concurrent Use.

(1) An applicant is eligible to have their current background screening approval shared with or transferred to another program only if the applicant is currently enrolled in the FBI Rap Back System.

(2) An applicant who wishes to have their current background screening shared with or transferred to another program shall complete a background screening application and identify the name of the original program.

(3) An applicant shall not have unsupervised direct access until the program receives written confirmation from the Office that the background screening is current and valid.

(4) A background screening approval that has been transferred or shared shall have the same expiration date as the original approval.

R501-14-12. Post-Approval Responsibilities.

(1) An applicant and Background Screening Agent shall immediately notify the Office if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records, or the DAAS Statewide Database after a background screening application is approved.

(a) An applicant who is associated with a licensee or department contractor shall immediately notify the licensee or department contractor if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records, or the DAAS Statewide Database.

(2) An applicant who has received an approved background screening shall resubmit an application and personal identifying information to the Office within ten calendar days after being charged with any felony, misdemeanor, or infraction, or being listed in the Licensing Information System, the DAAS Statewide Database, or juvenile court records.

(3) An applicant who has been charged with any felony, misdemeanor, or infraction or listed in the Licensing Information System or the DAAS Statewide Database, or juvenile court records, after a background screening application is approved shall have no unsupervised direct access to a child or vulnerable adult until after an application and personal identifying information have been resubmitted to the Office and a current background screening approval is received from the Office.

(4) An applicant charged with an offense for which there is no final disposition and no Comprehensive Review Committee denial, shall inform the Office of the current status of each case.

(a) The Office shall determine whether the charge could require a denial or committee review, and if so, notify the applicant to submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.

(b) An applicant shall submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.

(5) The Office may revoke the background screening approval of an applicant who:

(a) has been charged with any felony, misdemeanor, or infraction or is listed in the Licensing Information System, the DAAS Statewide Database, or juvenile court records; and

(b) fails to provide required current status information as described in (4) of this Rule.

(6) The Office shall process identifying information received pursuant to R501-14-12(2) in accordance with R501-14.

(7) A Background Screening Agent shall notify the Office when an applicant is no longer associated with the program no later than five months from the date of termination.

(a) The Office shall verify that the applicant is not associated with another program, and notify BCI within two years of the date that the applicant is no longer associated with any licensee.

R501-14-13. Confidentiality.

(1) The Office may disclose criminal background screening information, including information acknowledging the existence or non-existence of a criminal history, only to the Applicant and the Background Screening Agent, and in accordance with the Government Records Access and Management Act, Section 63G-2-101, et seq.

(2) Except as described in R501-14-11 and below, background screening information may not be transferred or shared between human service programs.

(a) A licensed child-placing agency may provide the approval granted by the Office to the person who is the subject of the approval, another licensed child-placing agency, or the attorney for the adoptive parents, in accordance with Section 53-10-108(4).

R501-14-14. Retention of Background Screening

Information.

(1) A human services program or department contractor shall retain the background screening information of all associated individuals for a minimum of eight years after the termination of the individual's association with the program.

R501-14-15. Expungement.

(1) An applicant whose background screening application has been denied due to the applicant's criminal record may submit a new application with a certified copy of an Order of Expungement.

R501-14-16. Administrative Hearing.

(1) A Notice of Agency Action that denies the applicant's background screening application or revokes the applicant's background screening approval shall inform the applicant of the right to appeal in accordance with Administrative Rule R497-100 and Section 63G-4-101, et seq.

R501-14-17. Exemption.

(1) Section 62A-2-120(13) provides an exemption for substance abuse programs providing services to adults only. In order to claim this exemption, an applicant, human services program, or department contractor may request this exemption on a form provided by the Office, and demonstrate that they meet exemption criteria. Final determination shall be made by the Office.

R501-14-18. Compliance.

(1) A licensee that is in operation on the effective date of this Rule shall be given 90 days to achieve compliance with this Rule.

KEY: licensing, background screening, fingerprinting, human services
January 17, 2017 62A-2-108 et seq.
Notice of Continuation September 29, 2015

R512. Human Services, Child and Family Services.
R512-311. Out-of-Home Services. Psychotropic Medication Oversight Panel.
R512-311-1. Purpose and Authority.

(1) The purpose of this rule is to establish and operate a psychotropic medication oversight panel for children in the custody of Child and Family Services to ensure that foster children are being prescribed psychotropic medication consistent with their needs.

(2) This rule is authorized by Sections 62A-4a-102, 62A-4a-104, and 62A-4a-213.

R512-311-2. Definitions.

(1) "Advanced Practice Registered Nurse" is defined in Section 58-31b-102.

(2) "Child" is defined in Section 62A-4a-101.

(3) "Child and Family Services" means the Division of Child and Family Services, Department of Human Services.

(4) "Fostering Healthy Children nurse" is a nurse assigned to each child in foster care through the Fostering Healthy Children program administered by the Department of Health.

(5) "Oversight Panel" means the Psychotropic Medication Oversight Panel.

(6) "Psychotropic medication" is defined in Section 62A-4a-213.

R512-311-3. Composition of the Oversight Panel.

(1) The Oversight Panel shall be comprised, at minimum, of an Advanced Practice Registered Nurse and a child psychiatrist. Other individuals may be added to the panel as resources permit and when Child and Family Services determines it to be necessary.

R512-311-4. Duties of the Oversight Panel.

(1) The Oversight Panel shall monitor foster children:

(a) six years old or younger who are being prescribed one or more psychotropic medication; and

(b) seven years old or older who are being prescribed two or more psychotropic medications.

(2) The children shall be referred to the Oversight Panel by the Fostering Healthy Children nurse.

(3) The Oversight Panel may request information and/or records related to the foster child's health care history, including psychotropic medication history and mental and behavioral health history, including trauma assessment and trauma treatment history, from the foster child's current or past caseworker; the foster child; the foster parents; the natural parents; the legal guardians from whom the child was removed; and/or the foster child's current or past health care provider. The caseworker and/or nurse shall assist in obtaining the information and records requested by the oversight.

(4) The Oversight Panel may review and monitor information about the foster child, make recommendations to the foster child's health care providers concerning the foster child's psychotropic medication or the foster child's mental or behavioral health.

(5) The oversight Panel shall provide these recommendations to the foster child's parent or legal guardians from whom the child was removed, and to the child's caseworker after discussing the recommendations with the foster child's current health care providers.

KEY: child welfare
January 10, 2017 **62A-4a-102**
62A-4a-105
62A-4a-213

R523. Human Services, Substance Abuse and Mental Health.
R523-4. Certification Requirements for Screening, Assessment, Prevention, Treatment and Recovery Support Programs for Adults.
R523-4-1. Authority.

This rule is authorized by Section 62A-15-103(h) and 62A-15-103(2)(a)(v) requiring the Division of Substance Abuse and Mental Health (Division) to establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, minimum standards and requirements for the provision of substance use disorder and mental health treatment to individuals who are required to participate in treatment by the court or the Board of Pardons and Parole, or who are incarcerated and to develop, in collaboration with public and private programs, minimum standards for public and private providers of substance abuse and mental health programs licensed by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities.

R523-4-2. Purpose.

This rule prescribes the minimum standards required for programs that provide mental health and substance use disorder screening, assessment, prevention, treatment, education and recovery supports services for adults, and requirements to obtain a quality certification.

R523-4-3. Definitions.

(1) "Screening" means a preliminary appraisal of an individual to determine if further assessment of mental health, and/or substance use risk and needs is warranted.

(2) "Assessment" means an in-depth clinical interview with a licensed mental health therapist, used to:

(a) Determine if an individual is in need of:

(i) Mental health or substance use disorder treatment services;

(ii) Educational or Prevention series;

(iii) Recovery support services;

(b) Recommend a needed level of care or array of services.

(3) "Criminogenic Risk" means individual characteristics that are directly related to researched causations of crime.

(4) "Level of Care" means the intensity of either substance use disorder services needed as defined by the American Society of Addiction Medicine (ASAM) or the array of services needed to address an individual's mental health issues.

(5) "Treatment" means the array of therapeutic services, including individual, family, group services, medications and interventions designed to improve and enhance social or psychological functioning and reduce criminogenic risk for individuals identified as having either mental health or substance use disorders. The ultimate goal of treatment services is to engage the individual in a process of recovery.

(6) "Educational or Prevention Series" means an evidence-based instructional series for individuals with low criminogenic risk obtained at a substance use disorder program that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105 designed to prevent the onset of substance use and/or mental health disorders.

(7) "Recovery" means a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(8) "Recovery Support" means social support services or activities provided before, during or after completion of acute treatment services to enhance an individual's ability to either attain or retain their recovery from either mental health or substance use disorders.

R523-4-4. Standards for Criminogenic Risk Screening and Assessment for Agencies Treating Justice Involved Individuals.

(1) Prior to participating in educational, preventative or treatment services adults shall be given a brief, validated, risk and needs screen to determine whether the adult is of low, moderate, or high risk to re-offend.

(2) Screenings shall:

(a) Be conducted by an individual that has completed training recommended by the developer of the specific instrument being used and/or approved by the Division;

(b) Collect information about behaviors and characteristics known to predict re-offending including delinquency history, social history, and attitudes/behaviors.

(3) If the screen indicates a high or moderate likelihood of re-offending the adult shall be given an in-depth assessment of criminogenic risk and need with an instrument that has been evaluated and found reliable and valid by the scientific community for the purpose of identifying specific criminogenic risks and needs.

(4) The criminogenic assessment shall examine a wide variety of factors related to the adult's strengths and challenges including: criminal history, school, employment, relationships, environment, current living arrangements, alcohol and drugs, mental health, attitudes, behaviors, and skills.

(5) The criminogenic assessment shall also identify protective factors that are related to the reduced likelihood of re-offending and risk factors that are related to the increased likelihood of re-offending.

R523-4-5. Standards for Substance Use and Mental Health Disorder Screenings.

(1) Adults shall be screened using an instrument(s) that has been evaluated and found reliable and valid by the scientific community to determine whether the adult is in need of a comprehensive assessment.

(2) Screenings shall be:

(a) Conducted by an individual that has completed training recommended by the developer of the specific instrument being used and/or approved by the Division;

(b) Trauma-sensitive, developmentally appropriate, and culturally sensitive.

(3) The individual shall be referred for an assessment if the screening identifies potential substance use and/or mental health disorders.

(4) Screenings shall not be used to determine diagnosis but may assist in determining the need for further assessment.

R523-4-6. Standards for Substance Use and Mental Health Disorder Assessments.

(1) Assessments shall be conducted by a licensed mental health therapist using a standardized process/instrument(s) that has been evaluated by the scientific community and determined to be reliable and valid for the purpose of assessing individuals.

(2) Assessments shall identify the individual's level of motivation for treatment and implement strategies to increase engagement and need for clinically appropriate Mental Health Disorder services and/or Substance Use Disorder services in the following modified ASAM Patient Placement Criteria dimensions:

(a) Risk of acute psychosis, intoxication/withdrawal;

(b) Biomedical conditions or complications;

(c) Emotional, behavioral, or cognitive conditions;

(d) Readiness to change;

(e) Relapse, continued use or continued problem potential; and

(f) Recovery environment.

(3) The assessment shall include relevant information on:

(a) The individual's psychosocial function, substance use including tobacco/nicotine, mental and physical health, and

other factors, such as educational experiences, trauma history, cultural issues, legal involvement, and family relationships that are relevant to the purpose of the assessment;

(b) Strengths, resiliencies, natural supports, interests of the individual, and an evaluation of the individual's unique abilities;

(c) Developmental and functional levels, social, emotional, communication abilities and strengths, and independent living skills;

(d) Cognitive, social, and affective development; family, peer, and intimate relationships; trauma; current or past emotional, physical or sexual abuse; suicidality; and safety;

(e) Collateral information from other sources that are relevant to the individual's situation and provides insight into the issues in Subsection R523-4-6(2)(a) through (2)(d).

(4) The assessment shall include a diagnosis when clinically indicated.

(5) Based on the screening and the assessment, the assessor shall make recommendations regarding the needed level of care and services to address the identified clinical needs.

(6) The levels of care and array of services shall be based on the ASAM or equivalent Mental Health criteria.

R523-4-7. Standards for Providers of Educational or Prevention Series.

(1) Entities wishing to provide an intervention, program, activity or curriculum to individuals with a substance use disorder shall:

(a) Obtain and maintain an outpatient or residential facility license from the Department of Human Services, Office of Licensing.

(b) Use only educational and prevention material that meets the requirements for listing on Utah's registry of evidence-based practices identified in Section R523-9 that:

(i) Address the substance use, and mental health needs of the targeted population;

(ii) Provides accurate information that is designed to promote compliance with Utah laws; and

(iii) Meet the requirements set forth in Subsection 62A-15-103(h) and Subsection R523-4-7(1)(b) through 1(f).

(c) Not implement any educational programs until approved by the Division.

(d) Maintain records documenting the individual's attendance and course completion or failure to attend and/or complete.

(e) Not include minors in adult groups.

(f) Serve low criminogenic risk individuals and high criminogenic risk individuals separately.

(g) Provide accurate information and be designed to promote compliance with Utah laws.

R523-4-8. Program Standards for Community-Based Treatment Programs.

(1) All programs shall maintain the appropriate license from the Department of Human Services Office of Licensing for the type(s) of services being provided.

(2) Treatment programs shall:

(a) Ensure that public funds are the payor of last resort and:

(i) Coordinate or refer individuals to the Department of Workforce Services or healthcare navigators for assistance with eligibility for public or private insurance plans.

(ii) May negotiate and assess usual and customary fees to adults.

(b) All substance use providers complete and submit the National Survey on Substance Abuse Treatment Services (N-SSATS), and all mental health providers complete the National Mental Health Services Survey (N-MHSS).

(4) All public substance use providers, including the Local Substance Abuse Authorities and their contracted providers, shall submit Treatment Episode Data (TEDs) admission and discharge data as outlined in the Division's most current Division Directives.

(5) Programs seeking a quality certification that provides services to justice involved individuals shall:

(a) Evaluate all participants for criminogenic risk and need, and deliver services that target the specific risk and needs identified;

(b) Ensure individuals with high risk and individuals with low risk to re-offend are treated separately;

(c) Provide multi-dimensional treatment that targets the validated criminogenic risk factors; and

(d) Coordinate and communicate with Adult Probation and Parole, county sheriff's offices, or other necessary criminal justice agencies on a regular and consistent basis as agreed.

R523-4-9. Treatment Standards for Community-Based Treatment Programs.

(1) Treatment intensity, duration and modality for:

(a) Substance use disorders shall be based on the current ASAM criteria; and

(b) Mental health disorders shall be determined by the clinical assessment process and medical necessity.

(2) Treatment programs shall:

(a) Have qualified staff licensed and capable of assessing individuals for both mental health and substance use disorders;

(b) Develop strategies to screen for, prevent, and refer to treatment adults with serious chronic conditions such as, but not limited to, HIV/AIDS, Hepatitis B and C, and tuberculosis;

(c) Ensure that assessment is an ongoing component of treatment;

(d) Diagnose, treat or ensure treatment for co-occurring conditions;

(e) Ensure treatment participation and length shall be of sufficient dosage/duration to affect stable behavioral change and long term recovery supports;

(f) Develop an individualized treatment plan that identifies a comprehensive set of tools and strategies that address the client's identifiable strengths as well as their problems and deficits;

(g) Provide comprehensive treatment services that includes but is not limited to:

(i) Developmentally appropriate and informed treatments;

(ii) Recognition of gender, cultural, linguistic, and other individual differences in the treatment approach;

(iii) Ensuring all individuals with alcohol and/or opioid disorders are educated and screened for the potential use of medication-assisted treatment;

(iv) Monitoring drug use through drug testing and other means;

(v) Individuals testing positive for drugs or alcohol shall not be denied entry or removed from treatment from a program solely for positive drug tests;

(vi) All public substance use providers, including the Local Substance Abuse Authorities and their contracted providers shall comply with all Division Directives for Drug testing as published in the annual DSAMH Division Directives and/or preferred practice guidelines;

(vii) As appropriate and with consent, involve families and support persons in the treatment and recovery process; and

(viii) Provide Naloxone education, training and assistance to individuals with opiate use disorders and when possible to their families, friends, and significant others.

(2) Treatment programs shall work with individuals to identify needed and desired recovery supports and ensure that:

(a) Participation in recovery support shall be voluntary; and

(b) Whenever possible, individuals are encouraged and given a choice of potential recovery support services and a

choice of programs.

(3) Services such as case management, housing, employment training, transportation, childcare, healthcare, peer support and other social supports shall be strongly considered and implemented if appropriate before, during and after the completion of acute treatment services.

R523-4-10. Standards for Jail or Prison Treatment Programs.

(1) All individuals shall be screened for criminogenic risk, mental health, substance use disorders and substance withdrawal syndromes as part of the intake process.

(2) Individuals with signs and symptoms of withdrawal shall receive timely medical care or a transfer to a more appropriate facility that can provide standard detoxification services.

(3) Jail or prison-based treatment service providers shall coordinate care with community-based treatment providers so that individuals may transition to treatment services in the community.

(4) Treatment programs shall:

(a) First assess level of motivation for treatment and implement strategies to increase engagement;

(b) Assess individuals for mental health, substance use disorders and criminogenic risk using scientifically validated instruments and protocols;

(c) Diagnose and treat or ensure treatment for co-occurring conditions;

(d) Provide comprehensive treatment services;

(e) As appropriate and with consent, involve families and support persons in the treatment process;

(f) Use developmentally appropriate and informed treatments;

(g) Monitor drug use through drug testing and other means;

(i) Programs shall comply with all Division Directives for drug testing as published in the annual DSAMH Division Directives;

(h) Have qualified staff licensed and capable of assessing individuals for both mental health and substance use disorders;

(i) Recognize gender, cultural, linguistic, and other individual differences in their treatment approach;

(j) Provide ongoing chronic disease management, recovery support, monitoring and link to needed community supports;

(k) All individuals with alcohol and/or opioid disorders shall be educated and screened for the potential use of medication-assisted treatment;

(l) Treatment providers shall develop strategies to screen for, prevent, and refer to treatment adults with serious chronic conditions such as HIV/AIDS, Hepatitis B and C, and tuberculosis;

(m) Work with individuals to identify needed and desired recovery supports;

(i) Recovery supports may include preparation/planning for housing, employment, health care, peer support or other services upon release;

(ii) Recovery supports may be provided before, during or after the completion of acute treatment services.

R523-4-11. Documentation Standards for Community and Jail/Prison Based Treatment Services.

(1) A complete and accurate record of all clinical services shall be kept for each individual served that contains the following information:

(a) Any and all screenings and assessments completed;

(b) Any and all consent forms or required disclosures;

(c) A comprehensive treatment plan;

(d) Progress notes;

(e) Continuing recovery recommendations upon discharge; and

(f) Record reflects cultural and gender specificity in treatment.

(2) The individual record is maintained in a manner so as to protect confidentiality and comply with 42 CFR Part 2 and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) documentation/privacy standards. The record is organized, clear, complete, current and legible.

(a) Consent forms for any release of information shall be found in the file.

(b) Consent forms shall be complete, and contain a statement that consent is subject to revocation, and shall be signed and dated by the patient.

(c) Each file shall contain a signed and witnessed Acknowledgement of Receipt of Privacy Statement.

(3) The individual record shall contain documentation of the initial assessment/engagement session.

(a) The assessment/engagement session identifies presenting problems and individual goals.

(b) The assessment/engagement session includes a statement of the individual's presenting problem(s) and:

(i) Identification and documentation of acute psychosis, intoxication/withdrawal relevant to the presenting problem.

(ii) Identification and documentation of biomedical conditions and complications relevant to the presenting problem.

(iii) Identification and documentation of emotional, behavioral, cognitive conditions, and/or complications relevant to the individual's current situation and presenting problem.

(iv) Identification, evaluation and documentation of readiness to change relevant to presenting problem.

(v) Identification and documentation of relapse, or continued problem potential relevant to presenting problem.

(vi) Identification and documentation of the individual's recovery environment relative to presenting problem.

(vii) Identification of recovery support services needed relevant to presenting problem.

(viii) An assessment/engagement session summary includes recommendations for level of care and intensity of services needed.

(ix) Documentation of an assignment for the individual to complete for their next session.

(4) Assessment process is ongoing and changes to assessment information are reflected throughout the record.

(5) Level of care and intensity of services are supported by ongoing assessment information, or differences are clinically justified.

(6) Assessment shall be signed and include the title of a person licensed in the State of Utah to diagnose, assess and treat people with mental health and substance use disorders.

(7) A treatment plan that contains the following:

(a) Specific, individualized, long-range goals;

(b) Behaviorally measurable, short-term objectives that support long-range goals;

(c) Evidence of the individual's participation in development of the plan;

(d) Evidence that the plan is based on the individual's goals and other needs identified in the screening and assessments;

(e) Objectives that are measurable, achievable within a specified time frame and reflect developmentally appropriate activities that support progress towards achievement of individual goals;

(f) Substance use disorder treatment plans should be based on the six ASAM Patient Placement Dimensions and shall address critical areas identified in each dimension. Mental Health Recovery Plans shall be organized in a similar manner;

(g) Interventions designed to help the patient complete the objectives; and

(h) Signature and title of a person licensed in the State of Utah to diagnose, assess and treat people with mental health and substance use disorders.

(6) The individual file shall include documentation of the individual's status throughout the individual record including:

(a) Changes in types, schedule, duration and frequency of therapeutic interventions to facilitate individual progress as well as changes in individual objectives and goals;

(b) Each contact shall be documented in a timely manner;

(c) Progress notes shall be kept that identify the date, duration and type of intervention;

(d) Progress notes shall document progress or lack of progress on the individual's goals as well as the clinician's assessment of the individual's changes in behaviors, attitudes and beliefs;

(e) Progress notes shall reflect clinician's assessment of the effectiveness of the therapeutic interventions and plans for future interventions, which is ideally accomplished through the use of standardized evidence based tools;

(f) Notes shall be legible and signed by a qualified staff indicating appropriate credentials;

(g) No-shows, cancellations or gaps in service such as vacation, incarceration or home visits shall be documented;

(h) Notes shall reflect behavioral changes as well as changes in attitudes and beliefs;

(i) Other group activities such as psychosocial rehabilitation, psychoeducation, life skills, case management, recreational therapy and recovery support services are documented to the extent required for clinical continuity and in order to meet financial requirements; and

(k) Upon discharge, recommendations for ongoing services include the extent to which established goals and objectives were achieved, what ongoing services are recommended, and a description of the individual's recovery support plan.

R523-4-12. Quality Certification Procedures for Educational Series and Community-Based Treatment Provider Sites That Do Not Provide Opioid Replacement Treatment.

(1) Programs seeking first-time approval or re-approval shall make application to the Division at least 60 days prior to delivering services.

(2) Each treatment site seeking certification shall submit a completed and signed application and assurances form to the Division.

(3) All application forms shall be reviewed by the Division.

(4) The Division shall determine if the application is complete and demonstrates compliance with this rule.

(5) The Division approves the application and determines the program has met all other requirements, the Division shall provisionally certify the program for a period of one year.

(6) The Division shall notify in writing all applicants within 30 days of submission of an application, whether the application is:

(a) Approved,

(b) Denied, or

(c) Requires additional information.

(7) A final certification shall:

(a) Be completed within the one year provisional certification period of time, according to the procedures established by the Division; and

(b) The final certification may last up to two years from the end date of the provisional certification.

(8) If an application for re-approval requires additional information, a previously certified program may continue to provide services for 30 days from the date of notification unless notified by the Department of Human Services to cease and desist.

R523-4-13. Corrective Action.

(1) When the Division becomes aware that a provider is in violation of this rule the Division shall:

(a) Identify in writing the specific areas in which the provider is not in compliance; and

(b) Send written notice to the provider within 30 days after becoming aware of the violation.

(2) The provider shall submit a written plan for achieving compliance within 30 days of notification of noncompliance.

R523-4-14. Suspension and Revocation.

(1) The Division may suspend the approval of a provider when a provider fails to:

(a) Respond in writing to areas of noncompliance identified in writing by the Division within the defined period;

(b) Comply with corrective action as agreed upon in its written response to the Division; or

(c) Allow the Division access to information or records necessary to determine the provider's compliance under this rule.

(2) The Division may revoke approval if a provider:

(a) Continues to provide the educational series after suspension;

(b) Fails to comply with corrective action while under a suspension; or

(c) Commits a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

(3) The Division shall notify the Administrative Office of the Courts, the Utah Department of Corrections, the Department of Human Services, Office of Licensing and county local authorities when a certification is suspended or revoked.

R523-4-15. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under this rule and intends to deny, suspend or revoke approval of a provider, the Division shall notify the applicant or provider of the action to be taken.

(2) A notice to deny, suspend or revoke approval shall contain the reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(3) The provider may request a meeting with the Director or their designee within ten calendar days of receipt of notification.

(4) A request for a meeting for this purpose shall be in writing.

(5) Within ten days following the close of the meeting the Division shall inform the provider or applicant in writing of the decision of the Director or Designee of the Division.

R523-4-16. Posting of Certified Providers.

(1) The Division shall maintain and make public a list of all certified educational or prevention series and treatment programs.

(2) The list shall include agency contact information, service location address, and target population.

KEY: offender substance abuse screenings, offender substance abuse assessments, offender substance abuse education series, offender substance abuse treatments
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42 CFR Part 2

R523. Human Services, Substance Abuse and Mental Health.
R523-11. Utah Standards for Approval of Alcohol and Drug Educational Providers and Instructors for Court-Referred DUI Offenders.
R523-11-1. Purpose and Statutory Authority.

(1) Purpose. This rule prescribes standards for approval of Providers and certification of Instructors for providing alcohol and drug education to court-referred offenders convicted of a Driving Under the Influence (DUI) violation of Sections 41-6a-502, 41-6a-510, 41-6a-528, and 73-18-12.

(2) Statutory Authority. This rule is promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Sections 41-6a-502, 62A-15-103, 62A-15-105, 17-43-201, 62A-15-501 through 503 and 76-5-207.

(3) Intent. The objective of the DUI Educational Program is to: (a) eliminate alcohol and other drug-related traffic offenses by helping the participant examine the behavior that led to the arrest, (b) assist the participant in implementing behavior changes to cope with problems associated with alcohol and other drug use, and (c) impress upon the participant the severity of the DUI offense.

R523-11-2. Definitions.

(1) "DUI Educational Program" herein referred to as "Program" is an instructional series offered by a licensed substance abuse treatment Provider agency which satisfies the standards established by the Division.

(2) "Provider" is a licensed substance abuse treatment agency that has been approved to offer DUI Education.

(3) "DUI" is driving or being in actual physical control of a vehicle while under the influence of alcohol or any drug or the combined influence of alcohol and any drug to a degree, which renders the person incapable of safely driving a vehicle. In these standards, "DUI" shall refer to individuals convicted of violating Sections 41-6a-510, 41-6a-502, 41-6a-528, and 73-18-12.

(4) "Certificate" is a written authorization issued by the Division to indicate that the Provider agency has been found to be in compliance with these Division standards and may offer DUI Education.

(5) "Screening" is a process using the SASSI (Substance Abuse Subtle Screening Inventory) or other Division approved screening tool in order to identify the need for education or additional assessment.

(6) "Instructor" is a person employed by a Provider who has been certified to instruct the state approved education course for a court-referred participant.

(7) "Participant" is a person attending DUI Education classes as a result of a DUI conviction or arrest. This person has received a screening which indicated education is appropriate.

(8) "Victim Impact Panel". A presentation designed to reflect the principles taught in the educational program that helps participants understand the potential impact on others of driving under the influence.

R523-11-3. Certification Requirements for DUI Educational Providers.

(1) In order to operate, a potential DUI Educational Provider shall make application to the Division at least 60 days prior to the planned effective date. The Division will provide the application form.

(2) Application for certification shall require the following:

(a) A brief description and purpose of the agency, and an explanation of the agency's relationship with other components of the local DUI system, i.e., Local Substance Abuse Authorities, local courts, police, Probation and Parole, Alcoholics or Narcotics Anonymous, etc.;

(b) The geographical area to be served;

(c) The ownership and person or group responsible for agency operation;

(d) The location and time that DUI classes would normally be held;

(e) A list of instructors employed by the agency; and

(f) A copy of the agency substance abuse treatment license.

(g) An outline describing how the agency will conduct the victim impact panel required by Section 62A-15-501;

(3) A DUI Educational Provider shall also:

(a) Ensure that each participant receive no less than 16 hours of face-to-face instruction using the Division approved curriculum, in accordance with R523-9, with no more than 8 hours of instruction occurring in any calendar day;

(b) Allow no more than 25 persons, including participant and others to a class;

(c) Follow the recommendations of the screening which has been provided;

(d) Ensure that screenings are conducted by staff who have been trained in administering the screening tool;

(e) Report the number of participants completing the DUI Educational Program to the Division at least every quarter;

(f) Have policies ensuring confidentiality of information maintained on each participant that conform to the requirements in 42 Code of Federal Regulations Chapter 1 Subchapter A Part 2;

(g) Ensure that Instructors follow the Division-approved curriculum;

(h) Have available for review a copy of the Provider's charter, constitution, or bylaws;

(i) Outline the eligibility criteria for admission to the program, including the screening tool used;

(j) Ensure that all Instructors employed by the Provider are certified to teach;

(k) Inform the Division of any licensing or address change;

(l) Comply with all applicable local, state and federal laws and regulations.

(m) Ensure that none of the Instructors are on probation or parole for any offense;

(n) Ensure that none of the Instructors has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous 3 years;

(o) Notify the Division in writing within 30 days if any Instructor has been arrested for any reason;

(p) Provide separate classes for participants who are younger than 18 years of age at the completion of the course; and

(4) Ensure that any victim impact panel be consistent with the educational program taught, and ensure that the total attendance is no more than 25 participants.

(5) A participant's participation in the DUI Educational Program shall not be a substitute for treatment as determined by a screening and assessment.

(6) The Division shall issue the Provider a certificate after determination has been made that the agency is in compliance with these standards.

(7) The Division Director or designee has the authority to grant exceptions to any of the certification requirements.

R523-11-4. On-site Survey of Provider.

(1) After a review of the application, a site review may be scheduled by a designated representative of the Division. With each application the applicant agrees, as a condition of Provider certification, to permit representative(s) of the Division and/or others authorized by the Division to enter and survey the

physical facility, program operation, client records and to interview staff and class participants to determine compliance with applicable laws.

(2) The DUI Educational Provider also agrees to allow representatives from the Division and others authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

(3) Review Procedures. Within 30 days after completion of an on-site survey, the Division shall notify the applicant of action taken: approval, denial, or request for further information.

R523-11-5. Instructor Certification.

(1) By this rule the Division hereby establishes certification requirements for Instructors, which consist of the following:

(a) All Instructors employed by any DUI Educational Provider shall be certified to teach prior to instructing the state approved DUI curriculum for any DUI Educational Provider.

(b) All Instructors shall attend and complete the requirements of the Instructor training authorized by the Division.

(c) Requirements in R523-11-5(a) and (b) above shall be complete and verifiable.

(d) The Instructor agrees, as a condition of certification, to use only the Division-approved curriculum when conducting a DUI Educational Program.

(e) The Instructor agrees to attend all required DUI training sessions sponsored or approved by the Division.

(f) An Instructor shall not be certified to teach DUI Education if he or she is on probation or parole for any offense.

(g) An Instructor shall not be certified to teach DUI Education if he or she has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous three years.

(h) An Instructor shall notify the Division within 30 days of any arrest.

R523-11-6. Recertification of Instructors.

(1) An Instructor must recertify every twenty-four months by: attending and completing the requirements of any Division-sponsored or approved DUI training sessions. The Instructor shall sign a register at those training sessions which have been set aside for DUI Instructor recertification.

(2) It is the responsibility of the Instructor to notify the Division immediately of any address change.

(3) An Instructor shall not be certified to teach DUI Education if he or she is on probation or parole for any offense.

(4) An Instructor shall not be certified to teach DUI Education if he or she has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous three years.

(5) If a current Instructor is arrested, he or she has 30 days to report the arrest to the Division.

(6) The Division Director or designee has the authority to grant exceptions to any of the certification requirements.

R523-11-7. Corrective Action for a Provider or an Instructor.

(1) If the Division becomes aware that a DUI education Provider or an Instructor is in violation of these standards, it shall proceed with the following steps:

(a) Within 30 days of becoming aware of the violation, the Division shall notify the Provider or the Instructor in writing of the area(s) of noncompliance.

(b) Within 30 days of receiving notification of violation, the program or the Instructor shall submit a written plan to the Division for achieving compliance.

(c) If the written plan is not accepted as satisfactory by the Division within 30 days the Provider or the Instructor shall be notified that they have been suspended.

(d) A Provider or an Instructor must cease conducting any DUI Educational Provider until the suspension is lifted.

(e) If the Division does not receive written evidence of compliance within 30 days of notification of suspension, the Division shall revoke the Provider or Instructor's certification.

R523-11-8. Revocation of a Provider's or an Instructor's Certification.

(1) The Division shall revoke the certification of a Provider or an Instructor for the following reasons:

(a) If the Provider or the Instructor fails to provide the Division by certified mail with written evidence of compliance within 30 days of notification of suspension.

(b) If the Provider or the Instructor continues to provide any DUI Education during the period of suspension, or

(c) If any Provider or Instructor receives more than two notices of noncompliance with these standards in a one-year period.

(2) If any Provider or Instructor's certification is revoked, they may not reapply for recertification for a period of twelve months.

R523-11-9. Redress Procedures for Programs or Instructors.

(1) Any Provider or Instructor whose certification has been revoked may request in writing an informal hearing with the Division Director or designee within ten days of receiving notice of revocation. Within ten days following the close of the hearing, the Division shall inform the Provider or the Instructor in writing of the decision as required under Section 63G-4-302 and R497-100-1 through R497-100-10.

(2) If they so choose, the Provider or the Instructor may appeal in writing the decision of the Division Director or designee by requesting a reconsideration hearing with the Office of Administrative Hearings as provided for under Section 63G-4-302.

R523-11-10. Standards for Victim Impact Panels.

(1) Victim impact panels may be conducted in person or by use of filmed versions approved by the Division.

(2) Providers shall ensure that victim impact panels are available in English, Spanish and other languages as needed.

(3) Providers shall limit attendance at victim impact panels to no more than 25 participants.

KEY: DUI programs, certification of instructors

January 17, 2017

17-43-201
41-6a-502
41-6a-510
41-6a-528
62A-15-103
62A-15-105
62A-15-501 through 503
63G-4-302
73-18-12
76-5-207
42 CFR Chapter 1 Subchapter A Part 2

R527. Human Services, Recovery Services.
R527-37. Closure Criteria for Support Cases.
R527-37-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

2. The purpose of this rule is to provide the federal regulation that is incorporated by reference.

R527-37-2. Closure Criteria for Support Cases.

This rule establishes the criteria a support case must meet in order to be eligible for case closure under federal regulations. The Office of Recovery Services adopts the federal regulations as published in 45 CFR 303.11, July 2, 2010 ed., which are incorporated by reference.

KEY: child support
October 23, 2012 62A-11-107
Notice of Continuation January 23, 2017 62A-1-111

R527. Human Services, Recovery Services.
R527-255. Substantial Change in Circumstances.
R527-255-1. Authority and Purpose.

1. The Office of Recovery Services is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

2. The purpose of this rule is to provide information about when a parent can request a review of the child support amount when a support order is less than three years old, and to identify what must be included for a request for review to be complete. The rule also defines when a change in circumstance is considered temporary or permanent.

R527-255-2. Request for Review based on Substantial Change in Circumstances.

1. A parent may request a less than three year review of a support order based on an alleged substantial change in circumstances. For the request to be complete, the parent must provide documentation of the alleged change at his/her own expense.

R527-255-3. Duration of the Change in Circumstances.

1. If the change in circumstances is projected to be temporary, defined as less than 12 months in duration, the office shall not initiate proceedings to adjust the award.

2. If the change in circumstances is projected to be long term or permanent, defined as 12 months or more in duration, the office shall initiate proceedings to adjust the award pursuant to Section 78B-12-210.

KEY: child support

October 23, 2012	**62A-11-107**
Notice of Continuation January 23, 2017	**62A-11-320.5**
	62A-11-320.6
	78B-12-210

R527. Human Services, Recovery Services.
R527-300. Income Withholding.
R527-300-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Sections 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to specify the responsibilities and procedures for the Office of Recovery Services/Child Support Services for income withholding.

R527-300-2. Income Withholding.

1. Income withholding is defined as withholding child support from an obligor's income. The payor of income forwards the amount withheld to the Office of Recovery Services/Child Support Services (ORS/CSS).

2. Income withholding may be initiated in a IV-D case, with concurrent notice to the obligor:

a. in a case which has an order issued prior to October 13, 1990, which has not been modified since October 13, 1990, even though the obligor is not delinquent as defined in Section 62A-11-401(6) or R527-300-3, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month, or

b. in a case which has an order issued or modified after October 13, 1990, which found a demonstration of good cause or entered a written agreement that immediate income withholding is not required, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month.

R527-300-3. Determining Delinquency.

1. If current support has been ordered but is not presently in effect; for example, the children are 18 years old, the children have been adopted, custody has changed, or the obligor is paying current support to the obligee; delinquency has occurred when the obligor has accrued a debt in an amount equal to or greater than the previously ordered current support for one month.

2. If there was not a previous current support order but there is a judgment for arrears, delinquency has occurred when the obligor fails to pay as agreed, provided the judgment was for at least one month's current support amount used to compute the judgment for arrears. If the judgment was by default and the judgment amount was for at least one month's current support amount used to compute the judgment, income withholding may begin immediately upon entry of the judgment.

3. A delinquency could be the result of an underpayment for several months that totals at least one month's current support.

4. A delinquency can occur prior to the end of the month if the obligor was ordered to pay on specific days of the month and failed to do so.

R527-300-4. Affidavit of Delinquency.

The Non-IV-A applicant prepares a month-by-month computation of the support debt, which is referred to as a statement of arrears. The statement of arrears is part of the application packet. As part of the statement of arrears, the applicant attests that the statement is true and accurate to the best knowledge and belief of the applicant. This signed statement shall satisfy the verified statement requirement of Section 62A-11-405.

R527-300-5. Administrative Review.

1. Section 62A-11-405(2)(b)(ii)(B) requires the obligor to file a written request for review with the office within 15 days to contest withholding. This written request for review shall state the obligor's basis for contesting the withholding.

2. If an administrative review is conducted pursuant to Section 62A-11-405(3), the notice of decision required may be mailed or delivered to the obligor in the ordinary course of business.

R527-300-6. Income Subject To Withholding.

Section 62A-11-406 limits the total amount of the income withheld for child support to the maximum permitted under Section 303(b) of the Consumer Credit Protection Act as cited in 15 U.S.C. Section 1673(b). In general, income withholding will be limited to withholding 50% of the obligor's disposable income. However, if 50% does not result in withholding enough to cover the current support obligation, the office may review an obligor's circumstances under the provisions of the Consumer Credit Protection Act to determine whether a higher percentage is permitted.

R527-300-7. Arrears Payments.

If the obligor owes back child support, ORS/CSS will work with the obligor in an effort to encourage timely payment of the debt by the obligor. If the obligor is unable to pay the debt in full, the office may accept monthly payments towards the back child support debt. The minimum arrears payment will be based on 10% of the current support obligation. Exceptions to the minimum arrears payment will be determined by the ORS or CSS Director.

R527-300-8. Modification of Withholding Amounts.

1. Once a Notice to Withhold Income for Child Support has been sent to the obligor's payor of income, any changes to the withholding amount will be made by sending the payor a modified Notice to Withhold Income for Child Support. The obligor will be provided concurrent notice of any changes.

2. If the obligor changes from one payor of income to another payor of income, a new Notice to Withhold Income for Child Support must be sent to the new payor in accordance with ORS/CSS assessment procedures.

R527-300-9. Income Withholding Termination.

1. Income withholding should be terminated if:

a. the obligor no longer has an obligation for current child support, and no longer has a debt to Utah or another state on whose behalf Utah is acting or to a Non-IV-A obligee on whose behalf Utah is acting;

b. the Non-IV-A obligee terminates the ORS/CSS case, income withholding was administratively implemented and the obligor no longer owes child support to Utah or other state on whose behalf Utah is acting, and the obligee does not want withholding to continue;

c. the obligor successfully contests the withholding which is currently in effect through the court or administrative review process. If income withholding was terminated based on a court or administrative order and the obligor later becomes delinquent, income withholding will be reinstated.

R527-300-10. Contesting an Income Withholding Order Issued by Another State.

The Obligor may contest the validity or enforcement of an income-withholding order issued by another state in this state by registering and filing a contest to that order in the appropriate Utah court.

KEY: child support, income, wages
June 30, 2009 **62A-11-401**
Notice of Continuation January 23, 2017 **62A-11-404**
62A-11-405

62A-11-406
62A-11-413
62A-11-414
78B-14-506

R527. Human Services, Recovery Services.
R527-330. Posting Priority of Payments Received.
R527-330-1. Purpose and Authority.

1. The Office of Recovery Services (ORS) is authorized to create rules necessary for the provision of social services by Section 62A-11-107.

2. The purpose of this rule is to clarify that ORS must first apply support payments to current support obligations before applying the money to past-due arrears debts. It also establishes a method for posting payments when the obligor does not provide instructions for the payment and has more than one case.

R527-330-2. Posting Priority of Payments Received.

The Office of Recovery Services shall determine to which debt payment will be credited in instances where the obligor has more than one case, and the obligor has not expressed his intention.

For Child Support Services cases, if the obligor expresses intent, the payment shall be credited to the case indicated. When the obligor has not expressed his intention, the Office of Recovery Services/Child Support Services (ORS/CSS) shall pro-rate payments, other than payments received from the Federal tax refund intercept program, among all of the obligor's current support obligations. Once the current support obligations have been met, a payment shall be split equally among all of the obligor's child support cases with arrears.

A payment credited to a case with arrears shall be applied to the oldest debt, and arrears owed to the family shall be paid before arrears owed to the State according to the priority specified in 42 USC Sec. 657.

KEY: child support, debt, public assistance programs
October 23, 2012 **62A-11-107**
Notice of Continuation January 23, 2017 **45 CFR 303.31**
45 CFR 303.32

R527. Human Services, Recovery Services.
R527-412. Intercept of Unemployment Compensation.
R527-412-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services is authorized to create rules necessary to fulfill its duties by Section 62A-11-107.

2. The purpose of this rule is to define the conditions under which the Office of Recovery Services may collect child support from unemployment compensation and the legal limitations on those amounts.

R527-412-2. Intercept of Unemployment Compensation.

1. Unemployment compensation shall be subject to income withholding if the case meets the criteria in R527-300. If for any reason the unemployment compensation is not subject to income withholding, the unemployment compensation may be subject to garnishment.

2. The obligor may volunteer but shall not be required to pay more than 50% of his gross Unemployment Compensation benefit, or the maximum amount permitted under Section 303(b), Consumer Credit Protection Act, 15 USC 1673(b). If the obligor volunteers to pay more than 50% of the Unemployment Compensation benefit or more than the maximum amount permitted under Section 303(d), Consumer Credit Protection Act, 15 USC 1673(b), that agreement shall be in writing.

KEY: child support, unemployment compensation

February 9, 2010	**35A-4-103(5)**
Notice of Continuation January 26, 2017	**62A-1-111**
	62A-11-107
	62A-11-401

R590. Insurance, Administration.
R590-70. Insurance Holding Companies.
R590-70-1. Authority.

This rule is adopted pursuant to:

(1) Section 31A-2-201, which authorizes the commissioner to make rules to implement the Insurance Code; and

(2) Section 31A-16-116, which authorizes the commissioner to make rules pertaining to an insurer subject to Title 31A, Chapter 16.

R590-70-2. Purpose.

The purpose of this regulation is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of the National Association of Insurance Commissioners, NAIC, Insurance Holding Company System Regulatory Act and Sections 31A-16-101 through 31A-16-119, hereinafter referred to as "the Act". The information called for by these regulations is hereby declared to be necessary and appropriate in the public interest and for the protection of the policyholders in the State of Utah.

R590-70-3. Definitions.

The definitions in Section 31A-1-301 and Title 31A, Part 16 apply to this rule.

(1) "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

(2) "Ultimate controlling person" means that person which is not controlled by any other person.

R590-70-4. Forms -- General Requirements.

(1)(a) Form A, Form B, Form C, Form D, Form E and Form F are intended to be guides in the preparation of the statements required by Sections 31A-16-103, 31A-16-105, and 31A-16-106.

(b) They are not intended to be blank forms which are to be filled in.

(c) The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items.

(d) All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted.

(e) Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(2)(a) Each statement including exhibits and all other papers and documents filed as a part thereof, shall be filed with the commissioner in electronic form by secure means.

(b) Each statement shall be signed in the manner prescribed on the form. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

(3) If an applicant requests a hearing on a consolidated basis under Subsection 31A-16-103(10), in addition to filing the Form A with the commissioner, the applicant shall file a copy of Form A with the NAIC in electronic form.

(4)(a) Statements should be prepared electronically.

(b) Statements shall be easily readable and suitable for review and reproduction.

(c) Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable.

(d) Statements shall be in the English language. Monetary values shall be stated in United States currency. If any exhibit or other document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

(5) Forms A, B, C, D, E, and F can be obtained from the Utah Insurance Department's website at www.insurance.utah.gov.

R590-70-5. Forms -- Incorporation by Reference, Summaries and Omissions.

(1)(a) Information required by any item of Form A, Form B, Form D, Form E or Form F may be incorporated by reference in answer or partial answer to any other item.

(b) Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, Form E or Form F, provided the document is filed as an exhibit to the statement.

(c) Excerpts of documents may be filed as exhibits if the documents are extensive.

(d) Documents currently on file with the Utah Insurance Department which were filed within three (3) years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where the incorporation would render the statement incomplete, unclear or confusing.

(2)(a) Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which was filed within three years and may be qualified in its entirety by such reference.

(b) In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects, except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents, a copy of which is filed.

R590-70-6. Forms -- Information Unknown or Unavailable and Extension of Time to Furnish.

(1) If it is impractical to furnish any required information, document or report at the time it is required to be filed, there shall be filed with the commissioner a separate document:

(a) identifying the information, document or report in question;

(b) stating why the filing thereof at the time required is impractical; and

(c) requesting an extension of time for filing the information, document or report to a specified date.

(2) The request for extension shall be deemed granted unless the commissioner within 60 days after receipt thereof enters an order denying the request.

R590-70-7. Forms -- Additional Information and Exhibits.

(1) In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, Form E and Form F, the commissioner may request such further material information, if any, as may be necessary to make the information contained therein not misleading.

(2) The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. The exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

(3) Changes to Form A, Form B, Form C, Form D, Form E and Form F shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

R590-70-8. Subsidiaries of Domestic Insurers.

The authority to invest in subsidiaries under Subsection 31A-16-102.5(2) is in addition to any authority to invest in subsidiaries which may be contained in any other provision of Title 31A.

R590-70-9. Acquisition of Control -- Statement Filing (Form A).

(1) A person required to file a statement pursuant to Section 31A-16-103, shall furnish the required information on Form A.

(2) Such person shall also furnish the required information on Form E, as described in R590-70-13.

R590-70-10. Amendments to Form A.

The applicant shall promptly advise the commissioner of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the commissioner's disposition of the application.

R590-70-11. Acquisition of Section 31A-16-103(1)(f)(i) Insurers.

(1) If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of Subsection 31A-16-103(1)(f)(i), the name of the domestic insurer on the cover page should be indicated as "ABC Insurance Company, a subsidiary of XYZ Holding Company."

(2) Where a Subsection 31A-16-103(1)(f)(i) insurer is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

R590-70-12. Pre-acquisition Notification (Form E).

(1) If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to Subsection 31A-16-103(1), that person shall file a pre-acquisition notification form, Form E.

(2) If a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to Section 31A-16-104.5, that person shall file a pre-acquisition notification form, Form E. No pre-acquisition notification form need be filed if the acquisition is beyond the scope of Section 31A-16-104.5 as set forth in Subsection 31A-16-104.5(2)(b).

(3) In addition to the information required by Form E, the commissioner may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

R590-70-13. Annual Registration of Insurers -- Statement Filing (Form B).

An insurer required to file an annual registration statement pursuant to Section 31A-16-105 shall furnish the required information on Form B.

R590-70-14. Summary of Registration -- Statement Filing (Form C).

An insurer required to file an annual registration statement pursuant to Section 31A-16-105 is also required to furnish information required on Form C.

R590-70-15. Amendments to Form B.

(1) An amendment to Form B shall be filed within fifteen days after the end of any month in which there is a material change to the information provided in the annual registration statement.

(2) Amendments shall be filed in the Form B format with only those items which are being amended reported. Each amendment shall include at the top of the cover page "Amendment No. (insert number) to Form B for (insert year)" and shall indicate the date of the change and not the date of the original filings.

R590-70-16. Alternative and Consolidated Registrations.

(1)(a) Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under Section 31A-16-105. A registration statement may include information not required by the Act regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this state.

(b) In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:

(i) the statement or report contains substantially similar information required to be furnished on Form B; and

(ii) the filing insurer is the principal insurance company in the insurance holding company system.

(2) The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

(3) With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under R590-70-16(1).

(4) Any insurer may take advantage of the provisions of Subsections 31A-16-105(8) or 31A-16-105(9) without obtaining the prior approval of the commissioner. The commissioner, however, reserves the right to require individual filings if the commissioner deems such filings necessary in the interest of clarity, ease of administration, or the public good.

R590-70-17. Disclaimers and Termination of Registration.

(1) A disclaimer of affiliation pursuant or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control any other person, hereinafter referred to as the "subject", shall contain the following information:

(a) the number of authorized, issued and outstanding voting securities of the subject;

(b) with respect to the person whose control is denied and all affiliates of such person:

(i) the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of such shares concerning which there is a right to acquire, directly or indirectly; and

(ii) information as to all transactions in any voting securities of the subject which were effected during the past six months by such persons.

(c) all material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person; and

(d) a statement explaining why such person should not be considered to control the subject; and

(2) A request for termination of registration shall be deemed to have been granted unless the commissioner, within thirty days after receipt of the request, notifies the registrant otherwise.

R590-70-18. Transactions Subject to Prior Notice -- Notice

Filing.

(1) An insurer required to give notice of a proposed transaction pursuant to Section 31A-16-106 shall furnish the required information on Form D.

(2) Agreements for cost sharing services and management services shall at a minimum and as applicable:

(a) identify the person providing services and the nature of such services;

(b) set forth the methods to allocate costs;

(c) require timely settlement, not less frequently than on a quarterly basis, and in compliance with the requirements in the Accounting Practices and Procedures Manual;

(d) prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(e) state that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(f) define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(g) specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(h) state that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;

(i) include standards for termination of the agreement with and without cause;

(j) include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

(k) specify that, if the insurer is placed in receivership or seized by the commissioner under Title 31, Chapter 27a:

(i) all of the rights of the insurer under the agreement extend to the receiver or commissioner; and,

(ii) all books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request;

(l) specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to Title 31, Chapter 27a; and

(m) specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under Title 31, Chapter 27a, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

R590-70-19. Enterprise Risk Report.

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Subsection 31A-16-105(12) shall furnish the required information on Form F.

R590-70-20. Extraordinary Dividends and Other Distributions.

(1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(a) the amount of proposed dividend;

(b) the date established for payment of the dividend;

(c) a statement as to whether the dividend is to be in cash or other property and if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;

(d) a copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

(i) the amounts, date and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the insurer's own securities, paid within the period of twelve consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

(ii) surplus as regards policyholders, total capital and surplus, as of the 31st day of December next preceding;

(iii) if the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;

(iv) if the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and

(v) if the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years;

(e) a balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and

(f) a brief statement as to the effect of the proposed dividend upon the insurer's surplus and reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

(2) Subject to Subsection 31A-16-106(2), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen business days following the declaration thereof, including the same information required by R590-70-20(1)(d).

R590-70-21. Adequacy of Surplus.

(1) The factors set forth in Subsection 31A-16-106(4) are not intended to be an exhaustive list.

(2) In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The commissioner instead will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer.

(3) In comparing the surplus maintained by other insurers, the commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

R590-70-22. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance law
January 10, 2017 31A-2-201
Notice of Continuation January 9, 2017

R590. Insurance, Administration.
R590-95. Rule to Permit the Same Minimum Nonforfeiture Standards for Men and Women Insureds Under the 1980 CSO and 1980 CET Mortality Tables.
R590-95-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Subsections 31A-2-201 and 31A-22-408 Utah Code Annotated.

R590-95-2. Purpose.

The purpose of this rule is to permit individual life insurance policies to provide the same cash surrender values and paid-up nonforfeiture benefits to both men and women. No change in minimum valuation standards is implied by this rule.

R590-95-3. Definitions.

A. As used in this rule, "1980 CSO Table, with or without Ten-Year Select Mortality Factors" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Standard Ordinary Mortality Table, with or without Ten-Year Select Mortality Factors.

B. As used in this rule, "1980 CSO Table (M), with or without Ten-Year Select Mortality Factors" means that mortality table consisting of the rates of mortality for male lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.

C. As used in this rule, "1980 CSO Table (F), with or without Ten-Year Select Mortality Factors means that mortality table consisting of the rates of mortality for female lives from the 1980 CSO Table with or without Ten-Year Select Mortality Factors.

D. As used in this rule, "1980 CET Table" means that mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Extended Term Insurance Table.

E. As used in this rule, "1980 CET Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 1980 CET Table.

F. As used in this rule, "1980 CET Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 1980 CET Table.

G. As used in this rule, "1980 CSO and 1980 CET Smoker and Nonsmoker Mortality Tables" mean the mortality tables with separate rates of mortality for smokers and nonsmokers derived from the 1980 CSO and 1980 CET Mortality Tables by the Society of Actuaries Task Force on Smoker/Nonsmoker Mortality and adopted by the NAIC in December 1983.

R590-95-4. Rule A.

For any policy of insurance on the life of either a male or female insured delivered or issued for delivery in this state after the operative date of Subsection 31A-22-408(6)(d), U.C.A. for that policy form,

(i) a mortality table which is a blend of the 1980 CSO Table (M) and the 1980 CSO Table (F) with or without Ten-Year Select Mortality Factors may at the option of the company be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors, and

(ii) a mortality table which is of the same blend as used in (i) but applied to form a blend of the 1980 CET Table (M) and the 1980 CET Table (F) may at the option of the company be substituted for the 1980 CET Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

The following tables will be considered as the basis for acceptable tables:

A. 100% Male 0% Female for tables to be designated as "the 1980 CSO-A" and "1980 CET-A" tables.

B. 80% Male 20% Female for tables to be designated as the "1980 CSO-B" and "1980 CET-B" tables.

C. 60% Male 40% Female for tables to be designated as the "1980 CSO-C" and "1980 CET-C" tables.

D. 50% Male 50% Female for tables to be designated as the "1980 CSO-D" and "1980 CET-D" tables.

E. 40% Male 60% Female for tables to be designated as the "1980 CSO-E" and "1980 CET-E" tables.

F. 20% Male 80% Female for tables to be designated as the "1980 CSO-F" and "1980 CET-F" tables.

G. 0% Male 100% Female for tables to be designated as the "1980 CSO-G" and "1980 CET-G" tables.

Tables A and G are not to be used with respect to policies issued on or after January 1, 1985 except where the proportion of persons insured is anticipated to be 90% or more of one set or the other or except for certain policies converted from group insurance. Such group conversions issued on or after January 1, 1986 must use mortality tables based on the blend of lives by sex expected for such policies if such group conversions are considered as extensions of the Norris decision. This consideration has not been clearly defined by court or legislative action in all jurisdictions. The values of 1000qx for blended Tables B, C, D, E and F are shown in Appendix I. The letter in Appendix II states the method by which selection factors may be obtained. Table A is the same as 1980 CSO Table (M) and 1980 CET Table (M) and Table G is the same as 1980 CSO Table (F) and 1980 CET Table (F). Appendices I and II are available from the Insurance Department.

R590-95-4A. Rule B.

In determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits for any policy of insurance on the life of either a male or female insured on a form of insurance with separate rates for smokers and nonsmokers delivered or issued for delivery in this state after the operative date of Subsection 31A-22-408-(6)(d) for that policy form, in addition to the mortality tables that may be used according to Section 4,

(i) a mortality table which is a blend of the male and female rates of mortality according to the 1980 CSO Smoker Mortality Table, in the case of lives classified as smokers, or the 1980 CSO Nonsmoker Mortality Table, in the case of lives classified as nonsmokers, with or without Ten-Year Select Mortality Factors, may at the option of the company be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors, and

(ii) a mortality table which is of the same blend as used in (i) but applied to form a blend of the male and female rates of mortality according to the corresponding 1980 CET Smoker Mortality Table or 1980 CET Nonsmoker Mortality Table may at the option of the company be substituted for the 1980 CET Table.

The following blended mortality tables will be considered acceptable:

SA: 100% Male 0% Female smoker tables designated as "1980 CSO-SA" and "1980 CET-SA" Tables.

SB: 80% Male 20% Female smoker tables designated as "1980 CSO-SB" and "1980 CET-SB" Tables.

SC: 60% Male 40% Female smoker tables designated as

"1980 CSO-SC" and "1980 CET-SC" Tables.

SD: 50% Male 50% Female smoker tables designated as "1980 CSO-SD" and "1980 CET-SD" Tables.

SE: 40% Male 60% Female smoker tables designated as "1980 CSO-SE" and "1980 CET-SE" Tables.

SF: 20% Male 80% Female smoker tables designated as "1980 CSO-SF" and "1980 CET-SE" Tables.

SG: 0% Male 100% Female smoker tables designated as "1980 CSO-SG" and 1980 CET-SG" Tables.

NA: 100% Male 0% Female nonsmoker tables designated as "1980 CSO-NA" and "1980 CET-NA" Tables.

NB: 80% Male 20% Female nonsmoker tables designated as "1980 CSO-NB" and "1980 CET-NB" Tables.

NC: 60% Male 40% Female nonsmoker tables designated as "1980 CSO-NC" and "1980 CET-NC" Tables.

ND: 50% Male 50% Female nonsmoker tables designated as "1980 CSO-ND" and "1980 CET-ND" Tables.

NE: 40% Male 60% Female nonsmoker tables designated as "1980 CSO-NE" and "1980 CET-NE" Tables.

NF: 20% Male 80% Female nonsmoker tables designated as "1980 CSO-NF" and "1980 CET-NF" Tables.

NG: 0% Male 100% Female nonsmoker tables designated as "1980 CSO-NG" and "1980 CET-NG" Tables.

Tables SA, SG, NA and NG are not acceptable as blended tables unless the proportion of persons insured is anticipated to be 90% or more of one sex or the other.

R590-95-5. Unfair Discrimination.

It shall not be a violation of Subsection 31A-23-302(3) of Utah Code for an insurer to issue the same kind of policy of life insurance on both a sex distinct and sex neutral basis.

R590-95-6. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

KEY: insurance law

1993	**31A-2-101**
Notice of Continuation January 9, 2017	**31A-2-201**
	31A-22-408

R590. Insurance, Administration.
R590-114. Letters of Credit.
R590-114-1. Authority.

This rule is adopted pursuant to Section 31A-2-201(3), which authorizes rules to implement the Insurance Code, and Section 31A-17-404(3), which provides for a rule to determine the form of letters of credit used as security to protect a ceding insurer in a transaction of reinsurance.

R590-114-2. Purpose and Scope.

A. The purpose of this rule is to determine, in accordance with the guidelines of Section 31A-17-404(3), the form of letter of credit security which will be acceptable to protect a ceding insurer in a transaction of reinsurance in which the alternative security factors of Section 31A-17-404(3) or 31A-17-404(6) are not present and funds of the reinsurer are retained by the ceding insurer in the form of a letter of credit. Security is maintained in order that credit for the reinsurance may be allowed the ceding insurer as either an asset or a deduction from liabilities. The allowance or disallowance of credit in reinsurance transactions may be used to determine compliance with other financial requirements of the Insurance Code.

B. This rule shall apply to all persons transacting insurance under the Utah Insurance Code.

R590-114-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

A. "Clean" shall refer to a letter of credit which does not require the presentation of any documents other than a sight draft for a draw upon available funds.

B. "Evergreen clause" shall refer to a provision in a letter of credit which prevents expiration of the letter unless advance notice is given by the issuer.

R590-114-4. Rule.

A. Letter of Credit requirements. A letter of credit issued to comply with Section 31A-17-404(3)(c)(iii), shall meet the following requirements. Full compliance with this rule shall be accomplished if the letter of credit takes the form of the "Model Letter of Credit", which is available from the Insurance Department. Letters of credit:

1. Shall be issued by a bank or trust company which is a member of the Federal Reserve system;

2. Shall name the ceding insurer as the sole beneficiary;

3. Shall be "clean", as defined;

4. Shall be unconditional and not subject to any qualifications outside the letter of credit;

5. May not contain references to any other agreements, documents or entities;

6. Shall be irrevocable, and may not be reduced or revoked without the written consent of the beneficiary;

7. Shall contain an "evergreen clause", as defined;

8. Shall have a term of not less than one year and shall be automatically extended for not less than one additional year unless the issuer, not less than 30 days prior to expiration, notifies both the ceding insurer and the reinsurer that the letter will not be renewed;

9. Shall state that the obligation of the bank is not contingent upon reimbursement;

10. Shall state whether it is subject to the laws of this state;

11. Shall provide that all drafts drawn be presentable at a bank office in the United States;

12. May contain a boxed reference section with the name of the applicant and other appropriate information for internal identification only, not to affect the terms of the letter or the obligations of the bank.

B. Nonrenewal or withdrawal of a letter of credit. In the event of nonrenewal or withdrawal of a letter of credit, the ceding insurer shall be able to withdraw the balance of the letter of credit and place the resulting sums in trust to secure continuing obligations under the reinsurance contract until it receives a renewal letter of credit or an alternative form of security which meets the standards of this rule or the Insurance Code.

C. Inspection. A letter of credit used as security under this rule shall be readily available for inspection by the commissioner or his designee upon request.

R590-114-5. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.

KEY: insurance
1994 31A-17-404
Notice of Continuation January 9, 2017

R590. Insurance, Administration.
R590-116. Valuation of Assets.
R590-116-1. Authority.

This rule is adopted pursuant to Subsection 31A-2-201(3), which authorizes rules to implement the Insurance Code, Subsection 31A-17-401(3)(a)(ii), which requires the commissioner to adopt a rule to determine the present value of future income derived from securities issued by an insurer's insurance subsidiaries, and Subsection 31A-17-401(4), which requires the commissioner to adopt rules for the valuation of insurer assets.

R590-116-2. Purpose and Scope.

A. The purpose of this rule is to comply with the statutory requirement of Subsection 31A-17-401(4), to adopt a rule for the valuation of insurer assets. The values established under this rule shall be used to determine compliance with other financial requirements of the Insurance Code.

B. This rule shall apply to all persons transacting insurance under the Utah Insurance Code.

R590-116-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

A. "Valuation of Securities" shall mean the publication of the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC).

B. "Amortizable" shall mean having been accorded that rating in "Valuation of Securities".

C. "In Good Standing" shall mean having been accorded that rating in "Valuation of Securities".

D. "Purchase Money Mortgages" shall mean mortgages or liens received as consideration, either in whole or part, on the disposal of real estate which secures such mortgage or liens.

E. "Burial Certificate" or "Burial Contract" if issued by an insurer shall be defined as an insurance contract and not as a security.

R590-116-4. Rule.

A. Assets of insurers transacting insurance under the Utah Insurance Code shall be valued as follows:

1. Bonds.

a. All obligations having a fixed term and rate, if not in default as to principal or interest, shall be valued

(i) At the par value, if purchased at par, or

(ii) If purchased above or below par, at the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made. For valuation purposes, the purchase price may not be higher than actual market value at the date of acquisition, including brokerage and other related fees. The bonds may not be carried at a value greater than the call price at which the entire issue may be called.

b. Obligations subject to amortization under the published findings of the NAIC shall be carried at their amortized values. Obligations which do not qualify for amortization under the published findings of the NAIC shall be carried at their market value or book value, whichever is lower.

c. Demand deposits and certificates of deposit in solvent banks and savings and loan institutions shall be valued at the account or certificate balance. Negotiable certificates of deposits with maturity terms less than three years shall be valued at face value. Negotiable certificates of deposit with maturity terms more than three years shall be valued at face value or market value whichever is less.

d. Obligations of insurance subsidiaries are to be valued in accordance with the requirements of Section 31A-17-401(3)(a), U.C.A., and Section (4)(B) of this rule.

2. Equipment Trust Certificates. Equipment trust certificates subject to amortization under the published findings of the NAIC shall be carried at their amortized values. Equipment trust certificates which are not listed as qualified for amortization under the published findings of the NAIC shall be carried at a value not to exceed the certificate's proportionate part of the aggregate principal amount of the equipment obligations outstanding times 70% of the net depreciated value of the equipment pledged.

3. Loans Secured By Real Estate Interest. Loans, other than purchase money mortgages, which are adequately secured by real estate interests and are not in default as to principal or interest, shall be valued at the unpaid principal balance if the acquisition was at par. Further, mortgage loans acquired at a premium or at a discount are to be valued at amortized cost. Procedures relating to the amortization of premiums and accrual of discounts on mortgage loans are as follows:

a. Federal Housing Administration (FHA) and Veterans Administration (VA) Mortgages. Premiums shall be amortized and discounts accrued over a five year period from date of acquisition. Companies may adjust the asset values of these mortgages to their face amounts, but any excess of aggregate permissive amortized value, cost of mortgages less repayments of principal, adjusted for amortization of premiums and accrual of discounts on a five year basis, shall be treated as a nonadmitted asset.

b. Mortgages other than FHA and VA Mortgages. The book value of real estate mortgages acquired at a premium shall be reported at values reflecting write-offs of such premiums over a three year period from date of acquisition. Real estate mortgages purchased at a discount shall be carried at the amortized value.

c. Premium amortization or discount accretion as required in R590-116-4.A.3.a. or 3.b. above shall be on the straight-line method of computation.

d. Adequately secured purchase money mortgages shall be valued at the unpaid principal balance of the lien reduced by a reserve for unrealized gain on the sale of real estate. The reserve shall maintain the same proportionate relationship between the unpaid principal balance as the original gain on the sale bore to the original note principal balance.

e. For loans that are in default or in foreclosure proceedings the carrying values may be adjusted for additional expenses such as taxes, insurance, and legal fees that have been incurred to protect the investment or to obtain clear title to the property. To the extent that such costs are to be recoverable from the ultimate disposition of the property, these costs may be added to the carrying value of the mortgage loans. However, such costs that cannot reasonably be expected to be recovered shall be expensed when incurred.

f. Loans with any of the following provisions may be valued, at the option of the commissioner, at discounted values which approximate market values of the loans at the valuation date:

i. Payments other than in equal installments;

ii. Payment periods less often than annually;

iii. Interest below conventional rates of return on the date the loan is granted.

4. Loans Secured By Pledged Securities Or Evidences Of Debt Eligible For Investment Under Section 31A-18-105 Loans which are adequately secured by pledge of securities or evidences of debt eligible for investment under Section 31A-18-105 shall be valued at par, if the acquisition was at par. Further, such loans acquired at a premium or at a discount are to be valued at the unpaid principal balance or cost, whichever is less.

5. Preferred and Guaranteed Stocks.

a. Preferred or guaranteed stocks in good standing are to be valued at cost by companies which are maintaining a mandatory securities valuation reserve. Companies not maintaining a mandatory securities valuation reserve shall value

such stocks at market value.

b. Preferred or guaranteed stocks not in good standing are to be valued at market value.

c. Market value as used for valuation of preferred or guaranteed stocks means in accordance with the values listed in "Valuation of Securities". For securities which are traded on a registered national securities exchange, but are not listed in that publication, market value may be established at the most recent published trade value. Securities not listed and not actively traded on a major stock exchange shall have a market value in an amount that the insurer can justify to the commissioner.

d. Preferred or guaranteed stocks of insurance subsidiaries are to be valued in accordance with the requirements of Subsection 31A-17-401(3)(a), and Subsection R590-116-4.B. of this rule.

6. Common Stocks.

a. Common stocks are to be valued at market value. Market value as used for valuation of common stocks means in accordance with the values listed in "Valuation of Securities". For securities which are traded on a registered national securities exchange, but are not listed in that publication, market value may be established at the most recent published trade value. Securities not listed in and not actively traded on a registered national securities exchange shall have a market value in an amount that the insurer can justify to the commissioner.

b. Common stocks of insurance subsidiaries are to be valued in accordance with the requirements of Subsection 31A-17-401(3)(a).

7. Real Estate.

a. An investment in real estate will be valued at not more than its reasonable cost plus capitalized permanent improvements less depreciation spread evenly over the life of the property or, at the option of the company, less depreciation computed on any basis permitted under the Internal Revenue Code and regulations.

b. Property acquired in satisfaction of a debt shall be valued at its fair market value or the amount of debt, including interest, taxes, and expenses incurred as cost in foreclosure, whichever is less.

8. Loans Upon the Security of the Insurer's Own Policies. Loans upon the security of the insurer's own policies shall be valued at the unpaid loan balance or the policy reserves securing such loan, whichever is less.

9. Financial Futures Contracts. Financial futures contracts, if approved by Insurance Department rule, shall be valued in the manner set forth by the commissioner.

10. Investment in Foreign Securities. Foreign securities permitted under Subsection 31A-18-105(11), shall be valued as follows:

a. Where information is available, at the value published by the NAIC. If the security is payable in a foreign currency the value shall reflect the currency exchange rate.

b. Where information is not available, the security shall have a market value that the insurer can justify to the commissioner. If the security is payable in a foreign currency the value shall reflect the currency exchange rate.

11. Separate Account Assets. Separate account assets shall have a value as required under Subsection 31A-18-102(4).

B. Value of Securities Other Than Common Stock Issued by an Insurance Subsidiary. The following provisions shall supplement Subsection 31A-17-401(3)(a), in controlling the manner in which assets of insurance subsidiaries are valued on the books of the parent insurer:

1. A parent insurer may attribute value to the security of an insurance subsidiary only if dividends or interest are being paid and payment can reasonably be anticipated to continue.

2. The value of securities other than common stock issued by an insurance subsidiary is the lesser of:

a. The present value of future income to be derived under the securities, or

b. The amount the parent would receive following liquidation of the subsidiary with payment, in full, of all creditors and holders with senior priority.

3. The present discounted value of future income under Subsection R590-116-4.B.2.a. of this rule shall be determined as follows:

$NPV = ((CF_1)/((1 + i)^1)) + ((CF_2)/((1 + i)^2)) + (CF_3)/((1 + 3)^3)) + ... ((CF_n)/((1 + i)^n))$

NPV = Net present value

CF = Cash flow

i = Assumed interest rate per period

n = Number of periods

If cash flows remain constant, the following formula may be used:

$NPV = CF(1-(1 / (1 + i)^n) / i)$

4. The interest rate used shall be equal to Moody's AA Bond rate given for securities of substantially equal duration, or other rate which can be justified by the insurer and is accepted by the commissioner.

R590-116-5. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances will not be affected.

KEY: insurance companies, rules and procedures
1987 31A-17-401
Notice of Continuation January 26, 2017

R590. Insurance, Administration.
R590-117. Valuation of Liabilities.
R590-117-1. Authority.

This rule is adopted pursuant to Subsection 31A-2-201(3), which authorizes rules to implement the Insurance Code, and Section 31A-17-402, which requires the commissioner to adopt a rule specifying which liabilities shall be reported by insurers and the methods for their evaluation.

R590-117-2. Purpose and Scope.

A. The purpose of this rule is to comply with the statutory requirement of Section 31A-17-402, to adopt a rule for the valuation of insurer liabilities. The values established under this rule shall be used to determine compliance with other financial requirements of the Insurance Code.

B. This rule shall apply to all persons transacting insurance under the Utah Insurance Code.

R590-117-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definition shall apply for the purposes of this rule:

A. "Liabilities" shall include reserves for payment of future obligations.

R590-117-4. Rule.

A. Liabilities to be reported.

1. All liabilities specifically provided for or contemplated by the annual statement blank or other reporting form prescribed by the commissioner under Section 31A-2-202.

2. Any other liabilities known to the reporting insurer, except liabilities specifically exempted or precluded by the reporting form.

B. Evaluation of liabilities. The values of reported liabilities shall be computed in accordance with the first applicable method from the following list, in ascending order:

1. in accordance with a specific provision of the Utah Insurance Code, Title 31A; or

2. in accordance with a specific Insurance Department rule, noted as superseding this general rule, or, in the absence thereof,

3. in accordance with another provision of the Utah Code; or

4. in accordance with procedures adopted or recommended by the National Association of Insurance Commissioners; or

5. in accordance with generally accepted accounting principles; or

6. in accordance with values as would be established by a prudent person and are accepted by the commissioner.

R590-117-5. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances will not be affected.

KEY: insurance companies, rules and procedures
1987 31A-17-402
Notice of Continuation January 26, 2017

R590. Insurance, Administration.
R590-142. Continuing Education Rule.
R590-142-1. Authority.

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to adopt rules to implement the provisions of the Utah Insurance Code;

(2) Subsection 31A-23a-202(1) that authorizes the commissioner to adopt a rule to prescribe the continuation requirements for a producer and a consultant;

(3) Subsection 31A-23a-202(3) that authorizes the commissioner to adopt a rule to:

(a) prescribe the manner in which a producer or consultant may obtain continuing education credit; and

(b) publish a list of professional designations whose continuing education requirements can be used to meet the requirements for continuing education for a producer and a consultant;

(4) Subsection 31A-23a-202(5) that authorizes the commissioner to adopt a rule to prescribe the processes and procedures for continuing education provider registration and course approval;

(5) Subsection 31A-23b-205(2) that authorizes the commissioner to adopt a rule to prescribe how navigator training requirements may be administered;

(6) Subsection 31A-23b-206(1) that authorizes the commissioner to adopt a rule to prescribe the continuing education requirements for the a navigator;

(7) Subsection 31A-23b-206(3) that authorizes the commissioner to adopt a rule to prescribe the manner in which a navigator may obtain continuing education credit;

(8) Subsection 31A-23b-206(5) that authorizes the commissioner to adopt a rule to prescribe the processes and procedures for continuing education provider registration and course approval;

(9) Subsection 31A-26-206(1) that authorizes the commissioner to adopt a rule to prescribe the continuing education requirements for an adjuster; and

(10) Subsection 31A-30-209 that authorizes the commissioner to adopt a rule to implement the continuing education requirements for the defined contribution market.

R590-142-2. Purpose and Scope.

(1) The purpose of this rule is to implement the continuing education requirements of Sections 31A-23a-202, 31A-23b-206, 31A-26-206, and 31A-26-209.

(2) This rule applies to all continuing education providers and individual producer, consultant, navigator, and adjuster licensees under Sections 31A-23a-202, 31A-23b-206, 31A-26-206, and 31A-30-209.

R590-142-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Sections 31A-1-301, 31A-23a-102, 31A-23b-102, 31A-26-102, 31A-35-102, and the following:

(1) "Classroom course" means:

(a) a course of study that:

(i) is taught on-site by a live instructor at the same location;

(ii) requires monitoring of a student; and

(iii) may require examination of course content to be performed by a student; or

(b) an interactive course of study that:

(i) is taught by a live instructor from a separate location;

(A) is delivered to a student via:

(I) computer;

(II) teleconference;

(III) webinar; or

(IV) some other method acceptable to the commissioner; or

(ii) is not taught by a live instructor;

(A) is delivered to a student via computer; or

(B) some other method acceptable to the commissioner;

(iii) requires two-way interaction between a student and the instrument of instruction;

(iv) requires monitoring of a student; and

(v) requires examination of course content to be performed by a student.

(2) "Credit hour" means one 50-minute period of insurance related instruction consisting of:

(a) a classroom course;

(b) a home study course; or

(c) some other method acceptable to the commissioner;

(3) "Designated internet site" means an internet site that is designated by the commissioner for a registered provider to submit a student's course completion information.

(4) "Home-study course" means a non-interactive course of study that:

(a) is not taught by a live instructor;

(b) is completed by a student via:

(i) computer;

(ii) video recording, if the video is professionally produced;

(iii) text book; or

(iv) some other method acceptable to the commissioner;

(c) does not require two-way interaction between a student and the instrument of instruction;

(d) does not require monitoring of a student; and

(e) requires examination of course content to be performed by the student.

(5) "Insurance related instruction" means that amount of time that is assigned by the commissioner to a course of study to satisfy the requirements of continuing education credit hours under this rule, in which assignment of value shall be made on the basis of:

(a) content;

(b) presentation; and

(c) format.

(6) "Monitoring of a student" means a person or system in place who verifies participation in and completion of a course.

(7) "Nonprofit provider" means an organization that fits the definition of nonprofit corporation as defined in Subsection 16-6a-102(34).

(8) "Registered Provider" means a person who satisfies the requirements of R590-142-8 and 9, and offers a course of study or program for credit to an applicant to satisfy the continuing education requirements of this rule.

R590-142-4. Continuing Education Requirements.

(1) A producer, consultant, adjuster, and navigator licensee shall comply with, and a registered provider shall be familiar with, the following continuing education requirements:

(a) upon renewal of a license, no continuing education credit hours in excess of the number required to renew the license may be carried over or applied to any subsequent licensing period;

(b) a licensee shall attend a course in its entirety in order to receive credit for the course; and

(c) a licensee may repeat a course for credit but will not be permitted to take a course for credit more than once in a license continuation period.

(2) Producer, Consultant, and Adjuster License. A producer, consultant, and adjuster licensee shall comply with, and a registered provider shall be familiar with, the following continuing education requirements:

(a) the number of credit hours of continuing education insurance related instruction required to be completed biennially as a prerequisite to a license renewal shall be in accordance with

Sections 31A-23a-202 and 31A-26-206;

(b) a producer, consultant, or adjuster licensee may obtain continuing education credit hours at any time during the two-year licensing period;

(c) not more than half of the total credit hours required shall be satisfied by courses provided to a producer, consultant or adjuster licensee by one or more insurers;

(d) a nonresident producer, consultant, or adjuster licensee who satisfies the licensee's home state's continuing education requirement is considered to have satisfied Utah's continuing education requirement; and

(e) a producer, consultant, or adjuster licensee with a professional designation may use the continuing education credit hours required to maintain the designation to satisfy the requirement of the commissioner if:

(i) the hours are sufficient to meet the current continuing education requirement described in Sections 31A-23a-202 and 31A-26-206; and

(ii) the professional designation consists of one or more of the following:

(A) Accredited Customer Service Representative (ACSR);

(B) Accredited Financial Examiner (AFE) or Certified Financial Examiner (CFE);

(C) Accredited Insurance Examiner (AIE) or Certified Insurance Examiner (CIE);

(D) Certified Financial Planner (CFP);

(E) Certified Insurance Counselor (CIC);

(F) Certified Risk Manager (CRM);

(G) Registered Employee Benefits Consultant (REBC);

(H) Chartered Property Casualty Underwriter (CPCU) with completion of the Continuing Professional Development (CPD) program; or

(I) Certified Life Underwriter (CLU), Chartered Financial Consultant (ChFC) or Registered Health Underwriter (RHU) with completion of the Professional Achievement in Continuing Education (PACE) recertification program.

(f) A producer who solicits or sells a defined contribution plan in accordance with Section 31A-30-209 shall complete a minimum of two hours of defined contribution continuing education that includes training on use of the Utah Health Exchange and premium assistance programs:

(i) prior to soliciting or selling a defined contribution plan; and

(ii) during each subsequent two-year licensing period that the producer solicits or sells a defined contribution plan.

(g) Continuing education requirements may be administered by:

(i) the commissioner; or

(ii) a continuing education provider approved by and registered with the commissioner.

(3) A continuing education provider, including a state or national professional producer or consultant association, may:

(a) offer a qualified program on a geographically accessible basis; and

(b) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner.

(4)(a) Navigator license. A navigator licensee shall comply with, and a registered provider shall be familiar with, the following continuing education requirements:

(i) for a navigator licensee, the number of credit hours of continuing education related instruction required to be completed annually as a prerequisite to license renewal shall be in accordance with Section 31A-23b-206; and

(ii) a navigator licensee may obtain continuing education credit hours at any time during the one-year licensing period;

(b) To act as a navigator, a person must:

(i) successfully complete the federal navigator training and certification program requirements as established by federal regulation under PPACA and administered through the United States Department of Health and Human Services, including any applicable training and certification or recertification requirements under that program; and

(ii) for a navigator line of authority:

(A) initially complete a minimum of two hours of defined contribution training that includes training on use of the Utah Health Exchange, and

(B) thereafter, prior to renewing the license, complete a minimum of one hour of defined contribution continuing education training on use of the Utah Health Exchange; or

(iii) for a certified application counselor line of authority:

(A) both initially and thereafter, prior to renewing the license, complete a minimum of one hour of defined contribution training that includes training on use of the Utah Health Exchange.

(c) A person is considered to have successfully completed the required continuing education requirements for a navigator license in accordance with Section 31A-23b-206 if the person has:

(i) met the requirements of (3)(b) above; and

(ii) completed at least 2 hours of ethics course.

(d) Continuing education requirements may be administered by:

(i) the commissioner;

(ii) a continuing education provider approved by and registered with the commissioner; or

(iii) a navigator related training program administered through the United States Department of Health and Human Services.

R590-142-5. Experience Credit.

(1) Continuing education credit hours may be granted to a producer, consultant, or adjuster licensee for experience credit at the discretion of the commissioner, including credit for experience such as the authoring of an insurance book, course or article.

(2) Membership by a producer or consultant in a state or national professional producer or consultant association is considered to be a substitute for two credit hours for each year during which the producer or consultant is a member of the association, except as provided in (3) below.

(3) No more than two hours of continuing education credit shall be granted per year during the two-year license continuation period, regardless of the number of professional associations of which the producer or consultant is a member.

(4) An approved continuing education course taught by an approved instructor holding a Utah producer, consultant, or adjuster license shall receive twice the number of credit hours allocated by the commissioner for the course, except as provided in Subsection (5) below.

(5) Credit for instruction of a course shall be granted no more than once per license renewal period for each course taught.

(6) Continuing education experience credit shall not be granted for committee service.

R590-142-6. Controls and Reporting of Credit Hours.

(1) Within 14 days of completion of a course of study, the registered provider shall:

(a) furnish to each student successfully completing the course a certificate of completion; and

(b) electronically submit through Sircon a course completion record identifying the:

(i) student that completed the course;

(ii) name and identifying course number of the course completed; and

(iii) number of credit hours completed by the student.

(2) In the event the registered provider fails to notify the

commissioner of a student's course completion, the licensee may use the certificate of completion as proof of having successfully completed the course.

(3) The registered provider shall keep proof of successful electronic attendance submission on file for a period of at least the current calendar year plus two years.

R590-142-7. Course Requirements.

(1) Except as permitted in R590-142-4(3), prior to offering a course for credit in Utah, a person must register as a provider and submit a completed continuing education course filing form and course outline for review by the commissioner.

(2) Upon receipt of a completed continuing education course filing form and course outline from a registered provider, the commissioner shall:

(a) approve a course as qualifying for credit in accordance with the standards of this rule;

(b) issue a course number; and

(c) assign the number of hours to be awarded to the approved course; or

(d) disapprove a course as not qualifying for credit; and

(e) furnish an explanation of the reason for disapproval of the course.

(3) A new course offered by a registered provider must be submitted to and approved by the commissioner at least 30 days prior to being offered, except that post approval of a course may be granted by the commissioner upon submission of a written request and supporting documentation of a course attended.

(4) A course advertisement shall not state or imply that a course has been approved by the commissioner unless written confirmation of the approval has been received by the registered provider.

(5) A department employee may attend a course at no cost for the purpose of auditing the course for compliance.

(6) The following course topics are examples of subject areas that qualify for approval if they contribute to the knowledge and professional competence of an individual licensee as a producer, consultant, or adjuster, and demonstrate a direct and specific application to insurance:

(a) a particular line of insurance:

(b) investments or securities in connection with variable contracts;

(c) principles of risk management;

(d) insurance laws and administrative rules;

(e) tax laws related to insurance;

(f) accounting/actuarial considerations in insurance;

(g) business or legal ethics; and

(h) other course subject areas may be acceptable if the registered provider can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this rule.

(7) The following course topics are examples of subject areas that do not qualify for approval:

(a) computer training and software presentations;

(b) motivation;

(c) psychology;

(d) sales training;

(e) communication skills;

(f) recruiting;

(g) prospecting;

(h) personnel management;

(i) time management; and

(j) any course not in accordance with this rule.

(8) The following continuing education standards must be met for a course offered by a registered provider to qualify for continuing education credit:

(a) the course must have significant intellectual or practical content to enhance and improve the insurance knowledge and professional competence of participants;

(b) the course must be developed by persons who are qualified in the subject matter and instructional design;

(c) the course content must be up to date;

(d) the instructor must be qualified with respect to course content and teaching methods;

(e) the instructor may be considered qualified if through formal training or experience, the instructor has obtained sufficient knowledge to competently instruct the course;

(f) the number of participants and physical facilities for a course must be consistent with the teaching method specified;

(g) the course must include some means for evaluating the quality of the course content;

(h) the course must provide for a method to authenticate each student's identity; and

(i) the course must be taught in a manner compliant with the Americans With Disabilities Act to enable licensees with a physical or mental disability to complete the continuing education requirements.

(9) The following are additional requirements for an interactive computer course of study offered by a registered provider that is not taught by a live instructor:

(a) provide one or more of the following type of exam questions at the end of each section of course material presented:

(i) multiple choice;

(ii) matching; or

(iii) true false;

(b) the exam questions shall cover material from the applicable section of the course that was presented to the student;

(c) only upon completion of an exam and not before or during the exam, identify all incorrect responses and inform the student of the correct response with an explanation of the correct answer;

(d) require answering 70% of the inquiries for each exam correctly to demonstrate mastery of the current section before the student is allowed by the program to proceed to the next section or complete the course;

(e) in the event a student does not achieve the 70% correct response rate necessary to advance to the next section, generate a different set of inquiries for the section, which may be repeated as necessary on a random or rotating basis;

(f) provide a method to reasonably authenticate the student's identity on a periodic hourly basis, including upon entering, during, and exiting the course;

(g) provide a method to ensure that the amount of time necessary for a student to complete course instruction and exam is no less than the amount of credit hours approved for the course; and

(h) provide for a method to directly transmit the final course completion results to the registered provider or a printed course completion receipt to be sent to the registered provider for issuance of a completion certificate.

(10) A continuing education course shall not be offered or taught by a person who has:

(a) a lapsed, surrendered, suspended, or revoked provider registration;

(b) a suspended or revoked insurance license; or

(c) been prohibited from teaching a course.

(11) Continuing education credit may not be granted for a course offered by a registered provider in which the course is:

(a) not approved by the commissioner; or

(b) offered or taught by a person who has:

(i) a lapsed, surrendered, suspended, or revoked provider registration; or

(ii) been prohibited from teaching a course.

R590-142-8. Registered Provider Requirements.

(1) A registered provider, or a state or national

professional producer, consultant, adjuster, or navigator association, may:

(a) offer a qualified course for a license type or line of authority on a geographically accessible basis; and

(b) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner.

(2) A person must register with the commissioner as a provider prior to acting as a registered provider in Utah.

(3) Except as provided in Subsection (4) below, to initially register as a provider, a person must:

(a) electronically submit a completed provider registration form via Sircon; and

(b) pay an initial registration fee, as identified in Rule R590-102.

(4)(a) To initially register as a nonprofit provider, a person must electronically submit a completed provider registration form via:

(i) Sircon; or

(ii) facsimile, or as a PDF attachment to an email, using a form available through the Department's website.

(b) A person initially registering as a nonprofit provider is not required to pay a registration fee.

(5) To renew a provider registration, a provider, other than a nonprofit provider, must:

(a) electronically submit a completed provider renewal form via Sircon; and

(b) pay an annual renewal fee, as identified in Rule R590-102, prior to the annual renewal date.

(6)(a) To renew a nonprofit provider registration, a nonprofit provider must:

(i) electronically submit a completed provider renewal form via:

(A) Sircon; or

(B) facsimile, or as a PDF attachment to an email using a form available through the Department's website.

(b) A nonprofit provider is not required to pay an annual renewal fee.

(7) Prior to a course offered by a registered provider being taught, a registered provider shall:

(a) electronically submit via Sircon, a course outline that includes information regarding the course content and the number of credit hours requested for the course prior to offering the course;

(b) post the course offering to a designated internet site;

(c) provide the commissioner with the name and resume of the instructor or instructors who will be teaching the course; and

(d) include identifying information as to any insurance license previously or currently held by the instructor or instructors who will be teaching the course.

(8) A registered provider shall report to the commissioner:

(a) an administrative action taken against the registered provider in any jurisdiction; and

(b) a criminal prosecution taken against the registered provider in any jurisdiction.

(9) The report required by Subsection (8) shall:

(a) be filed:

(i) at the time of submitting the initial provider registration; and

(ii) within 30 days of the:

(A) final disposition of the administrative action; or

(B) initial appearance before a court; and

(b) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (8).

(10) The commissioner may prohibit any person from acting as a registered provider or instructor in Utah if the commissioner determines that:

(a) the person is not competent and trustworthy; or

(b) the person or course of study fails to meet the qualifying standards.

R590-142-9. Loss of Provider Registration and Course Disapproval.

(1) A provider registration, other than a nonprofit provider registration, shall lapse if a provider fails to;

(a) electronically submit a completed provider renewal form via Sircon; and

(b) pay an annual renewal fee prior to the annual renewal date.

(2) A nonprofit provider registration shall lapse if a nonprofit provider fails to electronically submit a completed provider renewal form via:

(a) Sircon; or

(b) facsimile, or as a PDF attachment to an email, using a form available through the Department's website.

(3) To reinstate a lapsed or surrendered provider registration, other than a nonprofit provider registration, a provider must:

(a) electronically submit a completed provider reinstatement form via Sircon; and

(b) pay a reinstatement fee, as identified in Rule R590-102.

(4)(a) To reinstate a lapsed or surrendered nonprofit provider registration, a nonprofit provider must electronically submit a completed provider registration form via:

(i) Sircon; or

(ii) facsimile, or as a PDF attachment to an email, using a form available through the Department's website.

(b) A nonprofit provider is not required to pay a reinstatement fee.

(5) A provider registration may be denied, suspended or revoked, an instructor prohibited from teaching a course, or a course disapproved, if the commissioner determines that:

(a) a course teaching method or course content fails to meet the standards of this rule;

(b) a registered provider reports that an individual completed a course in accordance with the standards furnished for course credit, when in fact the individual has not done so;

(c) a registered provider or instructor conducting a course instructs for less than the number of credit hours approved by the commissioner, but reports the full credits for the individual attending the course;

(d) credit for a course is not electronically reported to a designated internet site in a timely manner for an individual who satisfactorily completes a course in accordance with the standards furnished for course credit;

(e) a registered provider or instructor:

(i) lacks sufficient education or experience in the subject matter of the course;

(ii) has had a provider registration suspended or revoked in another jurisdiction;

(iii) has had an insurance license suspended or revoked;

(iv) uses course material that has been plagiarized, or has copied course material without permission; or

(v) is otherwise no longer qualified in accordance with the standards of this rule; or

(f) there is other good cause evidencing that:

(i) a provider registration should be suspended or revoked;

(ii) an instructor should be disallowed from teaching a course; or

(iii) a course should be disapproved.

(6) The commissioner may disapprove any course, whether or not it had been previously approved, if:

(a) the commissioner determines that the course of study fails to meet the qualifying standards;

(b) the commissioner determines that the course material has been plagiarized, or copied without permission; or

(c) a change of 50% or more has been made in the course content since the initial approval of the course, subject to resubmission of the course for review and subsequent approval of the course by the commissioner.

(7) A registered provider may re-apply for a course that has been disapproved upon providing satisfactory proof to the commissioner that the conditions responsible for the disapproval have been corrected.

(8) To reinstate a suspended or revoked provider registration, a provider must:

(a) submit a completed provider registration form;

(b) submit a course outline that includes information regarding the course content and the number of credit hours requested for the course;

(c) pay a reinstatement fee, as identified in Rule R590-102, except as provided in Section 8(4) of this Rule; and

(d) provide satisfactory proof to the commissioner that the conditions responsible for the suspension or revocation have been corrected.

(9) A person with a revoked provider registration may not apply for a new registration for five years from the date the registration was revoked without the express approval by the commissioner, unless otherwise specified in the revocation order.

R590-142-10. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-142-11. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule on the effective date of the rule.

R590-142-12. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance continuing education
January 12, 2015
Notice of Continuation January 9, 2017

31A-2-201
31A-23a-202
31A-23b-205
31A-23b-206
31A-26-206
31A-26-209
31A-35-401.5

R590. Insurance, Administration.
R590-143. Life And Health Reinsurance Agreements.
R590-143-1. Authority.

This rule is adopted and promulgated by the commissioner pursuant to Section 31A-2-201.

R590-143-2. Scope.

This rule shall apply to all domestic life and accident and health insurers and to all other licensed life and accident and health insurers which are not subject to a substantially similar rule in their domiciliary state. This rule shall also similarly apply to licensed property and casualty insurers with respect to their accident and health business. This rule does not apply to assumption reinsurance, yearly renewable term reinsurance or certain nonproportional reinsurance such as stop loss or catastrophe reinsurance.

R590-143-3. Accounting Requirements.

A. No insurer subject to this rule may, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the department if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

(1) Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by the company at the time the business is reinsured;

(2) The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, is not considered to be such a deprivation of surplus or assets;

(3) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in force reinsurance by the ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty;

(4) The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded;

(5) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer amounts other than from income realized from the reinsured policies. For example, it is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company;

(6) The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identifies for a representative sampling of products or type of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

Risk categories:

(a) Morbidity

(b) Mortality

(c) Lapse

This is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy.

(d) Credit Quality (C1)

This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate.

(e) Reinvestment (C3)

This is the risk that interest rates will fall and funds reinvested (coupon payments or monies received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase.

(f) Disintermediation (C3)

This is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

TABLE

+ - Significant 0 - Insignificant

	RISK CATEGORY					
	a	b	c	d	e	f
Health Insurance - other than LTC/LTD*	+	0	+	0	0	0
Health Insurance - LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-Par Permanent	0	+	+	+	+	+
Traditional Non-Par Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0
Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium dump-in premiums allowed	0	+	+	+	+	+

* LTC = Long Term Care Insurance
LTD = Long Term Disability Insurance

(7)(a) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in Paragraph (7)(b)) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commissioner which legally segregates, by contract or contract provision, the underlying assets.

(b) Notwithstanding the requirements of Paragraph (7)(a), the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment or disintermediation risk may be held by the ceding company without segregation of such assets:

-Health Insurance - LTC/LTD

-Traditional Non-Par Permanent
-Traditional Par Permanent
-Adjustable Premium Permanent
-Indeterminate Premium Permanent
-Universal Life Fixed Premium
(no dump-in premiums allowed)

The associated formula for determining the reserve interest rate adjustment must use a formula which reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula: Rate = 2 (I + CG)/(X + Y - I - CG); Where: I is the net investment income CG is capital gains less capital losses X is the current year cash and invested assets plus investment income due and accrued less borrowed money. Y is the same as X but for the prior year

(8) Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.

(9) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

(10) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

(11) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

B. Notwithstanding Subsection A, an insurer subject to this rule may, with the prior approval of the commissioner, take such reserve credit or establish such asset as the commissioner may deem consistent with the Insurance Code and Rules including actuarial interpretations or standards adopted by the Department.

C.(1) Agreements entered into after the effective date of this rule which involve the reinsurance of business issued prior to the effective date of the agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the commissioner within 30 days from its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this rule and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with this department. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this rule.

(2) Any increase in surplus net of federal income tax resulting from arrangements described in Subsection C(1) shall be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account, page 4 of the Annual Statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "Reinsurance ceded" line, page 4 of the Annual Statement as earnings emerge from the business reinsured. (For example, on the last day of calendar year N, company XYZ pays a $20 million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34% tax rate, the net increase in surplus at inception is $13.2 million ($20 million - $6.8 million) which is reported on the "Aggregate write-ins for gains and losses in surplus" line in the Capital and Surplus account. $6.8 million (34% of $20 million) is reported as income on the "Commissions and expense allowances on reinsurance ceded" line of the Summary of Operations.

At the end of year N+1 the business has earned $4 million. ABC has paid $.5 million in profit and risk charges in arrears for the year and has received a $1 million experience refund. Company ABC's annual statement would report $1.65 million (66% of ($4 million - $1 million -$.5 million) up to a maximum of $13.2 million) on the "Commissions and expense allowance on reinsurance ceded" line of the Summary of Operations, and -$1.65 million on the "Aggregate write-ins for gains and losses in surplus" line of the Capital and Surplus account. The experience refund would be reported separately as a miscellaneous income item in the Summary of Operations.)

R590-143-4. Written Agreements.

A. No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the department, unless the agreement, amendment or a binding letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.

B. In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding 90 days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

C. The reinsurance agreement shall contain provisions which provide that:

(1) The agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and

(2) Any change or modification to the agreement shall be null and void unless made by amendment to the agreement and signed by both parties.

R590-143-5. Existing Agreements.

Insurers subject to this rule shall reduce to zero by June 30, 1997 any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this rule which, under the provisions of this rule would not be entitled to recognition of the reserve credits or assets; provided, however, that the reinsurance agreements shall have been in compliance with laws or rules in existence immediately preceding the effective date of this rule.

R590-143-6. Severability.

If a provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions is not effected.

KEY: insurance law
July 16, 1997 **31A-2-201**
Notice of Continuation January 9, 2017

R590. Insurance, Administration.
R590-147. Annual and Quarterly Statement Filing Instructions.
R590-147-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3), which authorizes the commissioner to establish by rule specific requirements for filing forms, rates, or reports required by the Utah Insurance Code; Section 31A-2-202, which authorizes the commissioner to require statements, reports and information to be delivered to the department or the National Association of Insurance Commissioners (NAIC) in a form specified by the commissioner; and Section 31A-4-113, which authorizes the commissioner to prescribe by rule the information to be submitted with and form of the annual statement.

R590-147-2. Purpose.

The purpose of this rule is to provide instructions for the filing of insurer annual and quarterly statements and required supplemental schedules, exhibits, and documents.

R590-147-3. Scope.

This rule applies to all insurers required to file annual and quarterly statements with the commissioner in this state.

R590-147-4. Definitions.

(1) For purposes of this rule:

(a) the commissioner adopts the definitions as particularly set forth in Section 31A-1-301; and

(b) "Insurer" includes all licensees who are licensed under Chapters 5, 7, 8, 9, 14 or 15 of Title 31A of the Utah Code.

R590-147-5. Rule.

(1) The annual statement, quarterly statements, and required supplemental schedules, exhibits, and documents shall be prepared in accordance with the latest edition of the NAIC annual and quarterly statement instructions and the accounting practices and procedures manual published by the NAIC.

(2)(a) All insurers shall file their annual statements, quarterly statements, and required supplemental schedules, exhibits, and documents electronically with the NAIC in accordance with the NAIC annual and quarterly statement instructions. The commissioner may allow insurers that operate only in Utah to file hard copy forms with the department and exempt them from filing electronically with the NAIC.

(b) Domestic insurers ONLY shall additionally file two paper copies of all documents required by Subsection R590-147-5(1) with the department, in accordance with the deadlines established in the NAIC annual and quarterly statement instructions.

(c) Foreign and alien insurers shall NOT file paper copies of documents required by Subsection R590-147-5(1) with the department, unless specifically requested by the commissioner.

(3) Administrative penalties, authorized by 31A-2-308, may be assessed to any insurer that:

(a) Fails to file an annual statement, quarterly statements, or required supplemental schedules, exhibits, and documents by the dates specified in the NAIC and department annual and quarterly statement instructions, or by the deadline established in any filing extensions granted by the department; or

(b) Fails to file a complete annual or quarterly statement filing.

(4) NAIC and department filing instructions, including due dates, may be found at the following websites: www.naic.org and www.insurance.utah.gov.

R590-147-6. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

R590-147-7. Enforcement Date.

The commissioner will begin enforcing the revised portions of this rule 45 days from the effective date of the rule.

KEY: insurance

February 10, 2005	**31A-2-201**
Notice of Continuation January 9, 2017	**31A-2-202**
	31A-4-113

R590. Insurance, Administration.
R590-150. Commissioner's Acceptance of Examination Reports.
R590-150-1. Authority.

This rule is issued pursuant to the general rule making authority vested in the commissioner by Section 31A-2-201, Utah Code, and pursuant to Subsection 31A-2-203(4), Utah Code.

R590-150-2. Purpose and Scope.

The purpose of this rule is to identify the examination reports that the commissioner will accept in lieu of his own examination and report. This rule applies to all insurers licensed under Chapters 5, 9, and 14 of Title 31A of the Utah Code.

R590-150-3. Rule.

In lieu of an examination under Section 31A-2-203 of the Utah Code, of any domestic, foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry until January 1, 1994. Thereafter, such reports may only be accepted if: (1) the insurance department was, at the time of the examination, accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or (2) the examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

R590-150-4. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances may not be affected thereby.

KEY: insurance companies
1992 31A-2-203(4)
Notice of Continuation January 9, 2017

R590. Insurance, Administration.
R590-173. Credit For Reinsurance.
R590-173-1. Authority.

This rule is promulgated pursuant to the authority granted by Section 31A-2-201 of the Insurance Code.

R590-173-2. Purpose.

The purpose of this rule is to set forth requirements the commissioner deems necessary to carry out the provisions of Section 31A-17-404. The actions and information required by this rule are necessary and appropriate to the public interest and for the protection of the ceding insurers in this state.

R590-173-3. Definitions.

A. "Accredited Reinsurer" means an insurer that has, by order of the commissioner, been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied in that it is an authorized insurer in at least one state as provided for in Subsection 31A-17-404(3)(e).

B. "Beneficiary" means the entity for whose benefit a trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator or liquidator.

C. "Grantor" means the entity that has established a trust for the benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited, untrusteed assuming insurer.

D. "Liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are otherwise secured by acceptable means and includes:

(1) For business ceded by domestic insurers authorized to write accident and health or property and casualty insurance:

(a) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer:

(b) reserves for losses reported and outstanding;

(c) reserves for losses incurred but not reported;

(d) reserves for allocated loss expenses; and

(e) unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, accident and health or annuity insurance:

(a) aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums:

(b) aggregate reserves for accident and health policies;

(c) deposit funds and other liabilities without life or accident and health contingencies; and

(d) liabilities for policy and contract claims.

E. "Mortgage-related security" means an obligation that is rated AA or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC) and that either:

(1) represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation, that:

(a) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S. C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(b) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S. C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S. C.A. Section 1703; or

(2) is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (1)(a) and (1)(b) of this subsection.

F. "Obligations," means:

(a) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(b) reserves for reinsured losses reported and outstanding;

(c) reserves for reinsured losses incurred but not reported; and

(d) reserves for allocated reinsured loss expenses and unearned premiums.

G. "Promissory note," when used in connection with a manufactured home, includes a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

H.(1) "Qualified United States financial institution" for the purposes of Section R590-173-7 and Subsection R590-173-9.A.(3) means an institution that:

(a) is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(2) "Qualified United States financial institution," for general purposes of this rule, means an institution that is eligible to act as a fiduciary of a trust that:

(a) is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers; and

(b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

I. "Trusteed Reinsurer" means an alien insurer which by order of the commissioner has been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied through a trust fund provided for in Subsection 31A-17-404(3)(d).

R590-173-4. Credit for Reinsurance - Reinsurer Licensed in this State.

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers authorized to do business in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-5. Credit for Reinsurance - Accredited and Trusteed Reinsurers.

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been granted accredited or trusteed reinsurer status in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

(1) is domiciled and licensed in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under Section 31A-17-404 and this rule;

(2) maintains total adjusted capital above the Company Action Level RBC; and

(3) files a properly executed Certificate of Assuming Insurer, Form AR-1, with the commissioner as evidence of its submission to this state's authority to examine its books and records.

B. The provisions of this section relating to surplus as regards policyholders will not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same insurance holding company system.

R590-173-7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified United States financial institution, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

(1) the trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trusteed surplus of not less than $20,000,000, except as provided in paragraph (2) of this subsection. For purposes of this section, liabilities attributable to business written in the United States means the liabilities attributable to reinsurance ceded by United States domiciled insurers.

(2) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

(3)(a) The trust fund for a group of incorporated and individual unincorporated underwriters shall consist of:

(i) for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' aggregate liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(ii) for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the respective underwriters' aggregate insurance and reinsurance liabilities attributable to business written in the United States; and

(iii) in addition to these trusts, the group shall maintain a trusteed surplus of which $100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.

(b) The incorporated members of the group will not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(i) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(ii) if a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

(4)(a) The trust fund for a group of incorporated insurers under common administration shall:

(i) consist of funds in trust in an amount not less than the assuming insurers' aggregate liabilities attributable to business ceded by United States domiciled insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group and;

(ii) maintain a joint trusteed surplus of which $100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(iii) file a properly executed Certificate of Assuming Insurer, Form AR-1, as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined shall bear the expense of any such examination.

(b) Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C.(1) Credit for reinsurance will not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

(a) contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

(b) legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;

(c) the trust shall be subject to examination as determined by the commissioner;

(d) the trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

(e) no later than February 28 of each year the trustee of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(2)(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(b) The assets shall be distributed by and claims of United States trust beneficiaries shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part of the trust fund are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part of the assets, to the trustee for distribution in accordance with the trust agreement.

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

D. Assets deposited in the trust shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a qualified United States financial institution, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust will not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under Subsection R590-173-7.D.(1)(e), (3), (5)(b) or (6), and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. A depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust shall be invested only as follows:

(1) government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(a) the United States or by any agency or instrumentality of the United States;

(b) a state of the United States;

(c) a territory, possession or other governmental unit of the United States;

(d) an agency or instrumentality of a governmental unit referred to in Subsections R590-173-7.D.(1)(b) and (c) if the obligations shall be by law payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but will not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

(e) the government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(2) obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution, other than an insurance company, or that are assumed or guaranteed by a solvent United States institution, other than an insurance company, and that are not in default as to principal or interest if the obligations:

(a) are rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(b) are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(c) have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(3) obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(4) an investment made pursuant to the provisions of Subsection R590-173-7.D. (1), (2) or (3) shall be subject to the following additional limitations:

(a) an investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities will not exceed 5% of the assets of the trust;

(b) an investment in any one mortgage-related security will not exceed 5% of the assets of the trust;

(c) the aggregate total investment in mortgage-related securities will not exceed 25% of the assets of the trust; and

(d) preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under Subsections R590-173-7.D.(2)(a) and (2)(c), but will not exceed 2% of the assets of the trust.

(5) Equity interests

(a) Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(i) its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(ii) the equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S. C. Sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust will not invest in equity interests under this subsection an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

(b) investments in common shares of a solvent institution

organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(i) all its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(ii) the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

(c) an investment in or loan upon any one institution's outstanding equity interests will not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subsection, when added to the aggregate cost of other investments in equity interests then held pursuant to this subsection, will not exceed 10% of the assets in the trust;

(6) obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(7) Investment companies

(a) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S. C. Section 802, are permissible investments if the investment company:

(i) invests at least 90% of its assets in the types of securities that qualify as an investment under Subsection R590-173-7.D. (1), (2) or (3) or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in Subsection R590-173-7.D.(1), (2) or (3); or

(ii) invests at least 90% of its assets in the types of equity interests that qualify as an investment under Subsection R590-173-7.D.(5)(a);

(b) investments made by a trust in investment companies under this subsection will not exceed the following limitations:

(i) an investment in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(i) will not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies will not exceed 25% of the assets in the trust; and

(ii) investments in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(ii) will not exceed 5% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Subsection R590-173-7.D.(5)(a).

E. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 9 of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

R590-173-8. Credit for Reinsurance--Certified Reinsurers.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of Administrative Rule R590-114, Letters of Credit, or Sections 10, or 11 of this Regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

TABLE

Ratings	Security Required
Secure - 1	0%
Secure - 2	10%
Secure - 3	20%
Secure - 4	50%
Secure - 5	75%
Vulnerable - 6	100%

(1) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(2) The commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(3) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

(a) Line 1: Fire
(b) Line 2: Allied Lines
(c) Line 3: Farmowners multiple peril
(d) Line 4: Homeowners multiple peril
(e) Line 5: Commercial multiple peril
(f) Line 9: Inland Marine
(g) Line 12: Earthquake
(h) Line 21: Auto physical damage

(4) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(5) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this Section.

B. Certification Procedure.

(1) The commissioner shall promptly post notice upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.

(2) The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with Subsection A of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.

(3) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the commissioner pursuant to Subsection C of

this section.

(b) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than $250,000,000 calculated in accordance with Subparagraph (4)(h) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $250,000,000 and a central fund containing a balance of at least $250,000,000.

(c) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(i) Standard and Poor's;

(ii) Moody's Investors Service;

(iii) Fitch Ratings;

(iv) A.M. Best Company; or

(v) any other nationally recognized Statistical rating organization.

(d) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.

(4) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited, to the following:

(a) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification;

TABLE
Financial Strength Ratings by Rating Agency

Ratings	Best	S and P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(b) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(c) For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

(d) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) available from the commissioner upon request;

(e) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(f) Regulatory actions against the certified reinsurer;

(g) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (h) below;

(h) For certified reinsurers not domiciled in the U.S., audited financial statements, (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the commissioner will consider audited financial statements for the last 3 years filed with its non-U.S. jurisdiction supervisor;

(i) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(j) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(k) Any other information deemed relevant by the commissioner.

(5) Based on the analysis conducted under subparagraph 4(e) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subparagraph (4)(a) if the commissioner finds that

(a) more than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed $100,000 for each cedent; or

(b) the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds $50,000,000.

(6) The assuming insurer must submit a properly executed Form CR-1 (available from the commissioner upon request) as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(7) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

(a) Notification within 10 days of any regulatory actions

taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

(b) Annually, Form CR-F or CR-S, as applicable;

(c) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (d) below;

(d) Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last 3 years filed with the certified reinsurer's supervisor;

(e) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

(f) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(g) Any other information that the commissioner may reasonably require.

(8) Change in Rating or Revocation of Certification.

(a) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of paragraph (4)(a).

(b) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(c) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(d) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Section 9 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 7, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of 3 months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

C. Qualified Jurisdictions.

(1) If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of such recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(2) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non- U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non- U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include but are not limited to the following:

(a) The framework under which the assuming insurer is regulated.

(b) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

(c) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(d) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(e) The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.

(f) The history of performance by assuming insurers in the domiciliary jurisdiction.

(g) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(h) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

(i) Any other matters deemed relevant by the commissioner.

(3) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under subsections 8.C(2)(a) to (i).

(4) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

(1) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the commissioner requires. The

assuming insurer shall be considered to be a certified reinsurer in this state.

(2) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days after receiving notice of the change.

(3) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Subparagraph B(7)(a) of this section.

(4) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with Subparagraph B(7)(b) of this section, the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this State.

E. Mandatory Funding Clause. Reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

F. The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified juridictions.

R590-173-9. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 Through 7.

A. The commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of any of the following:

(1) cash;

(2) securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(3) clean, irrevocable, unconditional and "evergreen" letters of credit that comply with Rule R590-114 issued or confirmed by a qualified United States financial institution; or

(4) any other form of security acceptable to the commissioner.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of R590-114, Letters of Credit and the applicable portions of Sections R590-173-10 and 11 of this rule have been satisfied.

R590-173-10. Trust Agreements Qualified under Section 9.

A. Required conditions

(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution.

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(4) The trust agreement shall provide that:

(a) the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(b) no other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(c) it is not subject to any conditions or qualifications outside of the trust agreement; and

(d) it will not contain references to any other agreements or documents except as provided for in Subsections R590-173-10.A.(11) and (12).

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) receive assets and hold all assets in a safe place;

(b) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary may, whenever necessary, negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(c) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(d) notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;

(e) upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(f) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(7) The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(10) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith.

(11) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(b) to make payment to the assuming insurer any amounts held in the trust account that exceed 102 % of the actual amount

required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(c) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in Subsections R590-173-9.A.(11)(a) and (b) as may remain executory after such withdrawal and for any period after the termination date.

(12) Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section R590-173-9. in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for:

(i) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(ii) the assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(b) to pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(c) where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in Subsections R590-173-10.A.(12)(a) and (b) as may remain executory after withdrawal and for any period after the termination date.

(13) Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in their insurance agreement.

(14) Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that all or part of the trust assets are not necessary to satisfy claims of the United States beneficiaries of the trust, all, or any part of the assets shall be returned to the trustee for distribution in accordance with the trust agreement.

B. Permitted conditions.

(1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in Subsection R590-173-10.C.(1)(b).

(4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

C. Additional conditions applicable to reinsurance agreements:

(1) A reinsurance agreement may contain provisions that:

(a) require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specify what the agreement is to cover;

(b) require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(c) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(d) stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established

pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to pay or reimburse the ceding insurer for:

(I) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(II) the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(III) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(ii) to make payment to the assuming insurer, amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) The reinsurance agreement also may contain provisions that:

(a) give the assuming insurer the right to seek approval from the ceding insurer, which will not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the current fair market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) after withdrawal and transfer, the current fair market value of the trust account is no less than 102 % of the required amount;

(b) provide for the return of any amount withdrawn in excess of the actual amounts required for Subsection R590-173-10.C.(1)(e), and for interest payments at a rate not in excess of the prime rate of interest on such amounts held; and

(c) permit the award by any arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in Subsection R590-173-10.C.(2)(b);

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) any other reasonable expenses.

D. Financial reporting

(1) A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction will be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

E. Existing agreements

(1) Any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this rule shall continue to be acceptable until January 1, 1999, at which time the agreements must fully comply with this rule for the trust agreement to be acceptable.

F. Identification of a beneficiary

(1) The failure of any trust agreement to specifically identify the beneficiary will not be construed to affect any actions or rights that the commissioner may take or possess pursuant to the provisions of the laws of this state.

R590-173-11. Other Security.

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

R590-173-12. Contracts Affected.

All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of this rule if credit is to be given to the ceding insurer for such reinsurance.

R590-173-13. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons or circumstances are not affected.

KEY: insurance
January 10, 2017 **31A-2-201**
Notice of Continuation June 27, 2012

R592. Insurance, Title and Escrow Commission.
R592-14. Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices.
R592-14-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404(2).

R592-14-2. Purpose and Scope.

(1) The purpose of this rule is to prohibit intentional delay, neglect or refusal by insurers, through their agents, to record or deliver for recording documentation necessary to support policy insuring provisions, resulting in the false appearance of unmarketability, in the record only, of property which would otherwise be marketable. This practice is deemed to be an unfair or deceptive act or practice detrimental to free competition in the business of insurance and injurious to the public.

(2) This rule applies to all title insurers, agency title insurance producers and individual title insurance producers.

R592-14-3. Definitions.

For the purpose of this rule, the Commission adopts the definitions as particularly set forth in Section 31A-1-301 and in addition the following:

A. "Document" means any instrument in writing relating to real property described in any title insurance policy, contract or commitment, and reasonably required for the support of the insuring provisions.

B. "Record" means to cause to be delivered to the county recorder, or other public official as may be appropriate, any document in the possession or control of any title insurance company or title insurance agent for which a request to record has been made by an insured party, title insurance company or title insurance agent.

R592-14-4. Definition and Classification of Unfair or Deceptive Practices and Material Inducements.

A. Any knowing conduct by a title insurance company or title insurance agent which results in the failure, neglect, refusal to record, or to obtain for recording, any document which, unless recorded, results in the apparent unmarketability of title or a title which may not be insurable by another insurer, is defined as an unfair or deceptive act or practice as prohibited by Section 31A-23a-402.

B. The issuance or agreement to issue title insurance, or the affirmation of current marketability of title, when the possible recording of documents of title has not occurred, and the record does not manifest a title which would be insurable according to generally accepted title insurance standards, is classified and proscribed as an advantage and material inducement to obtaining title insurance business as prohibited under Section 31A-23a-402(2)(c)(i)(D).

R592-14-5. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R592-14-6. Severability.

If any provision or clause of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances may not be affected by it.

KEY: insurance law
August 9, 2011 31A-2-404
Notice of Continuation January 9, 2017

R652. Natural Resources; Forestry, Fire and State Lands.
R652-1. Definition of Terms.
R652-1-100. Authority.

This rule implements Section 65A-1-4(2) which authorizes the Division of Forestry, Fire and State Lands to provide definitions which apply to all rules promulgated by the division unless otherwise provided.

R652-1-200. Definitions.

1. Animal unit (AU): is equal to one cow and calf or their equivalent.

2. Beneficiaries: the citizens of the state of Utah.

3. Beds of navigable lakes and streams: the lands lying under or below the "ordinary high water mark" of a navigable lake or stream.

4. Carrying capacity: the acreage required to adequately provide forage for an animal unit (AU) for a specified period without inducing range deterioration.

5. Commercial gain: compensation, in money, in services, or other valuable consideration rendered or products provided.

6. Comprehensive Management Plans: plans prepared for sovereign lands that guide the implementation of sovereign land management objectives.

7. Cooperative Agreement: an agreement between the Division and an eligible entity wherein the eligible entity agrees to meet a Participation Commitment and provide Initial Attack for wildland fire, and FFSL agrees to pay for wildland fire suppression costs following a Delegation of Fire Management Authority as found in Utah Code Section 65A-8-203.1, as well as all aviation asset costs charged to the incident.

8. Cultural Resources: prehistoric and historic materials, features, artifacts.

9. Cultural Resource Survey:

(a) Class I: literature and site files search.

(b) Class II: sample field surface survey or inspection.

(c) Class III: intensive field surface survey.

10. Director: the director of the Division of Forestry, Fire and State Lands

11. Division: Division of Forestry, Fire and State Lands

12. Easements: a right to use or restrict use of land or a portion of a real property interest in the land for a particular purpose granted by the division to a qualified applicant including but not limited to transmission lines, canals and ditches, pipelines, tunnels, fences, roads and trails.

13. Eligible entity: a county, a municipality, or a special service district, local district or service area with:

(a) wildland fire suppression responsibility as described in Section 11-7-1; and

(b) wildland fire suppression cost responsibility and taxing authority for a specific geographic jurisdiction; or

(c) upon approval by the director, a political subdivision established by a county, municipality, special service district, local district, or service area that is responsible for:

(i) providing wildland fire suppression services; and

(ii) paying for the cost of wildland suppression services.

14. Initial attack: actions taken by the first resources to arrive at a wildland fire incident, including size-up, patrolling, monitoring, holding action, or aggressive suppression action.

15. Management Plans: Comprehensive Management Plans, Resource Plans and Site-Specific Plans.

16. Municipality: a city, town, or metro township.

17. Ordinary high water mark: the high water elevation in a lake or stream at the time of statehood, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes or other tests as may be applied by the courts. This "ordinary high water mark" may not have been adjudicated in the courts.

18. Paleontological Resources (fossils): the remains or traces of organisms, plant or animal, that have been preserved by various means in the earth's crust.

19. Paleontological Resource Survey: an evaluation of the scientific literature or previous paleontological survey reports to assess the potential for discovery or impact to fossils by a proposed development, followed by a pedestrian examination of the exposed geological formations suspected of containing fossils of significance.

20. Paleontological Site: an exposure of a geologic formation having fossil evidence of scientific value as determined by professional consensus.

21. Participation Commitment: prevention, preparedness, and mitigation actions and expenditures approved by the Division undertaken by a participating entity to reduce the risk of wildland fire.

22. Participating Entity: an eligible entity with a cooperative agreement.

23. Planning Unit: the geographical basis of a general or comprehensive management plan; a consolidated block of state land, or a group of isolated state land sections or parts thereof, or a combination of blocks and isolated sections which provide common management opportunities or which have common commercial gain, natural or cultural resource concerns.

24. Preliminary Development Plan: the submittal, both of maps and written material, which shall identify and determine the extent and scope on a proposed unit development of the entire acreage under application. It shall illustrate, in phases, the development of the entire acreage and include a time table of the estimated schedule of development. The preliminary development plan shall identify density, open space, environmental reserves, site features, services and utilities, land ownerships, local master planning, zoning compliance and basic engineering feasibility.

25. Preliminary Development Plat: a plat which shall outline and specify the number of dwelling units, the type of dwelling units, the anticipated location of the transportation systems and description of water and sewage systems for the developed area on a Unit Development Lease.

26. State lands: all lands administered by the division.

27. Range condition: the relation between current and potential condition of the range site.

28. Record of Decision: a written finding describing a division action, relevant facts, and the basis upon which the decision for action was made.

29. Resource Plans: a plan prepared for a specific resource, such as mining, timber, grazing or real estate.

30. Rights-of-Entry: a right to a specific, non-depleting land use granted by the division to a qualified applicant that is temporary in nature, generally not to exceed one year in duration, including but not limited to seismic and land surveys, research sites, access across sovereign lands, and other temporary types of land uses.

31. Significant site: any site which is designated by the Division of State History as scientifically worthy of specific management.

32. Site: archaeological and cultural sites are places of prehistoric and historic human activity including aboriginal mounds, forts, buildings, earth works, village locations, burial grounds, ruins, caves, petroglyphs, pictographs, or other locations which are the source of prehistoric cultural features and specimens.

33. Site Specific Plans: plans prepared for sovereign lands which provide direction for specific actions. Site-specific plans shall include Records of Decision in either narrative or summary form.

34. Sovereign lands: those lands lying below the ordinary high water mark of navigable bodies of water at the date of statehood and owned by the state by virtue of its sovereignty or

land received in exchange for sovereign lands.

35. Survey Report: report of the various site files and field surveys or inspections.

36. Wildland: an area where:

(a) development is essentially non-existent, except for roads, railroads, power line or similar transportation facilities; and

(b) structures, if any, are widely scattered.

37. Wildland fire: a fire that consumes:

(a) wildland; or

(b) Wildland-urban interface, as defined in Section 65A-8a-102.

KEY: administrative procedures, definitions
January 10, 2017 65A-1-4(2)
Notice of Continuation April 2, 2012

R652. Natural Resources; Forestry, Fire and State Lands.
R652-120. Wildland Fire Responsibilities.
R652-120-100. Authority and Purpose.

This rule is adopted pursuant to the authority of Subsection 65A-1-4(2), which requires the Division to promulgate rules, and by Section 65A-8-101 et seq., which requires the Division to determine and execute the best method for fire control and the preservation of forest, watershed, and other lands, and to enter into agreements related to fire protection.

R652-120-200. Responsibilities of Division.

1. The division in consultation with local authorities, the division shall determine and execute the best method for protecting private and public property by:

(a) except as provided by Subsection (1), preventing, preparing for, or mitigating the origin and spread of fire on nonfederal forest, range, watershed or wildland urban interface land in the state;

(b) encouraging a private landowner to conserve, protect, and manage forest or other land throughout the state;

(c) taking action the division considers appropriate to manage wildland fire and protect life and property on the non-federal forest, range, watershed, or wildland urban interface land within the state.

(d) implementing a limited fire suppression strategy, including allowing a fire to burn within limited or modified suppression, if the division determines the strategy is appropriate for a specific area or circumstance.

(e) the state forester shall make certain that appropriate action is taken to control wildland fires on unincorporated non-federal forest, range, watershed and wildland urban interface lands.

2. The division may enter into a cooperative agreement with a county, municipality, or other eligible entity to provide financial and wildland fire management assistance.

R652-120-300. Responsibilities of Counties.

1. A county shall abate the public nuisance caused by wildfire on unincorporated, privately owned or county owned forest, range, watershed, and wildland urban interface lands within its boundaries.

(a) reduce the risk of wildfire to unincorporated, privately owned or county owned forest, range, watershed, and wildland urban interface land within the county's boundaries, with private landowner permission, through appropriate wildfire prevention, preparedness, and mitigation actions; and

(b) ensure effective wildfire initial attack on unincorporated privately owned or county owned forest, range, watershed, and wildland urban interface land within the county's boundaries.

(c) a county may assign the responsibilities described in Subsections (a) and (b) to a fire service provider or an eligible entity through delegation, contract, interlocal agreement or another method.

2. In a county that has not entered into a cooperative agreement as described in Section 65A-8-203 the county sheriff shall take appropriate action to suppress wildfires on state or private lands.

3. In all cases the sheriff shall:

(a) report, as prescribed by the state forester, on wildland fire control action;

(b) investigate and report wildfire causes; and

(c) enforce the provisions of this rule either independently or in cooperation with the state forester.

4. A county that has entered into a cooperative agreement, as described in 65A-8-203 and R652-120-600, the primary responsibility for wildfire management is the division, upon the delegation of fire management authority as described in 65A-8-203.1 and R652-120-1200.

5. The county sheriff and the county sheriff's organization shall maintain cooperative support with the fire management organization.

6. Each county that participates in a cooperative agreement with the division as described in 65A-8-203 and R652-120-600(5), shall be represented by a county fire warden at minimum during the closed fire season, as described in Section 65A-8-211, except as provided in Subsections (1)(b) and (c).

7. A county may enter into a cooperative agreement with the division to receive financial and wildland fire management cooperation and assistance.

R652-120-400. Responsibilities of Municipalities.

1. A municipality shall abate the public nuisance caused by wildfire on forest, range, watershed, and wildland urban interface lands within the boundaries of the municipality if the land is privately owned or owned by the municipality.

(a) reduce the risk of wildfire to unincorporated, privately owned or municipality owned forest, range, watershed, and wildland urban interface land, with private landowner permission, through appropriate wildfire prevention, preparedness, and mitigation actions; and

(b) ensure effective wildfire initial attack on unincorporated privately owned or municipality owned forest, range, watershed, and wildland urban interface land within the municipality's fire protection boundaries.

(c) a municipality may assign the responsibilities described in Subsections (a) and (b) to a fire service provider or an eligible entity through delegation, contract, interlocal agreement or another method.

2. A municipality may enter into a cooperative agreement with the division to receive financial and wildland fire management cooperation and assistance.

R652-120-500. Burning Permits.

1. Burning permits shall be issued only by the following authorized officials: state forester, his staff, and persons designated by the state forester. Burning permits are required for open fires during the closed fire season as specified in Section 65A-8-211 and during any extension of the closed fire season proclaimed by the state forester.

2. The permit form, provided by the state forester, shall be filled out completely and in accordance with instructions determined and furnished by his office.

3. Permittees shall comply with any written restrictions or conditions imposed with the granting of the permit.

4. The permittee shall sign the permit form.

5. Burning permits will be issued only when in compliance with the Utah Air Conservation Regulations. The following requirements must be met with each burning permit issued:

(a) The permit is not valid and operative unless the Clearing Index is 500 or above. The clearing index is determined daily by the U.S. Weather Bureau and available from county health offices, the State Forester's Office or Area Offices of the Utah State Department of Health.

(b) A permit may be extended one day at a time, without inspection upon request to the issuing officer. The request must be made before the expiration of the permit.

6. Agriculture has a limited exemption to open burning restrictions for the Division of Forestry, Fire and State Lands rules as indicated in Section 65A-8-211 and the Utah Air Conservation Regulations as outlined in Section 19-2-114.

7. Burning permits shall not be issued when red flag conditions exist or are forecasted by the National Weather Service. Every permittee is required to contact the National Weather Service to assure that a red flag condition does not exist or is not forecasted. Permits are not valid or operative during declared red flag conditions.

R652-120-600. Limited Suppression Areas.

1. The division may establish fire management areas where the level and degree of suppression activities are to be commensurate with the value of the resources within the fire management area.

2. Fire management plans shall be available for public review and comment prior to implementation.

3. County commission approval is required for any fire management plan that provides for limited fire suppression action on private lands within a fire management area.

R652-120-700. Prescribed Fire.

1. All prescribed burns utilizing division assistance other than permitting must have a written burn plan that has been reviewed and approved by the division. Burn plans shall include at a minimum information to determine management objectives and procedures to attain the objectives. Data will be provided to deal with safety concerns and smoke management. The burn plan will detail needs to insure the prescribed burn occurs within prescription.

2. A private landowner or state lessee/permittee receiving assistance on a prescribed fire shall supply resources specified in the burn plan.

3. Fire-fighting equipment placed by the division in any county for fire protection purposes cannot be required to assist or be fully committed to a prescribed fire, but may be utilized as available.

R652-120-800. Management for Cultural Resources and Threatened and Endangered Species.

Cultural resources, paleontological resources, and threatened and endangered species which may be affected by a proposed prescribed fire or within a fire management plan will be considered, protected or mitigated, as may be required and practical.

KEY: administrative procedures, burns, permits, endangered species
January 10, 2017 65A-8-101
Notice of Continuation November 11, 2014 65A-8-211

R652. Natural Resources; Forestry, Fire and State Lands.
R652-121. Wildland Fire Suppression Fund.
R652-121-100. Authority.

This rule implements Article XVIII of the Utah Constitution and Section 65A-8-204 and provides for administration of the Wildland Fire Suppression Fund under the authority of Section 65A-8-207.

R652-121-200. Wildland Supression Fund.

1. The Wildland Fire Suppression Fund may be used to pay the costs of wildland fire suppression on state-owned land and for wildland fire suppression costs except initial attack costs on non-federal land within the jurisdiction of a county, municipality, or other eligible entity that has entered into a cooperative agreement with the Division and is complying with the terms of the cooperative agreement.

2. A county, municipality, or other eligible entity without a cooperative agreement or one with a revoked cooperative agreement shall be responsible to pay for all wildland fire suppression costs on non-federal land within its jurisdiction within 90 days after receiving a bill from the Division for such costs, subject to a right to an informal appeal to the State Forester. Any appeal must be submitted to the Division in writing within 90 days of receiving the bill. The State Forester may conduct an investigation, hold an informal hearing, or request additional information before making a final decision.

R652-121-300. Payment of Wildland Fire Suppression Fund Costs.

1. After an eligible entity has entered into a cooperative agreement with the Division, all wildland fire suppression costs beyond initial attack within the jurisdiction of the eligible entity will be paid by the Wildland Fire Suppression Fund.

2. Area managers will verify to the state forester in writing that an eligible entity has a cooperative agreement.

3. Each participating entity must make a good faith effort to recover suppression costs for negligently-caused wildland fires. If the participating eligible entity refuses to make a good faith effort to recover suppression costs from a negligent party for a wildland fire without approval from the State Forester, the suppression costs for that fire shall not be eligible for payment from the Wildland Fire Suppression Fund. The State Forester will determine if a good faith effort has been made to recover suppression cost.

4. Wildland fire suppression costs recovered under Section 65A-3-3 will be repaid to the Wildland Fire Suppression Fund.

R652-121-400. Revocation of Participation in Fund.

1. Participation in the Wildland Fire Suppression Fund may be revoked for failure to:

(a) enter into a cooperative agreement with the Division,

(b) comply with the terms of the cooperative agreement with the Division; or

(c) fulfill its participation commitment.

2. The division will notify a participating entity in writing of any breach of the cooperative agreement.

3. Failure to remedy a breach may result in revocation of the entity's cooperative agreement pursuant to the terms of the cooperative agreement which shall preclude participation in the Wildland Fire Suppression Fund.

4. The revocation decision may be informally appealed to the State Forester within 30 days of the notice. The State Forester may conduct an investigation, hold an informal hearing, or request additional information. The final decision of the State Forester will be sent to the entity.

R652-121-500. Withdrawal from Participation in Fund.

1. An entity may withdraw from participation in the fund by revoking its cooperative agreement the end of the agreement's term by:

(a) informing the division, in writing, of the eligible entity's intention to revoke the cooperative agreement; or

(b) failing to sign and return it annual financial statement as described in R652-120-400(5)(e), unless an extension has been granted by the Division.

R652-121-600. Reinstatement of Participation in Fund.

1. An eligible entity that voluntarily withdrew participation in the Wildland Fire Suppression Fund pursuant to R652-121-500 may enter into a new cooperative agreement with the Division and become a participating entity.

2. An eligible entity whose participation in the Wildland Fire Suppression Fund was revoked by the division pursuant to R652-121-400 may enter into a new cooperative agreement with the Division and become a participating entity only after remedying the breach that resulted in the revocation. If the revocation was due to failure to fulfill the participation commitment for one or more years, the eligible entity shall agree to fulfill the previous participation commitments during the first three-year term of the new cooperative agreement in addition to the participation commitments for each year of the cooperative agreement.

KEY: administrative procedures, wildland fire fund
January 10, 2017 65A-8-207
Notice of Continuation September 25, 2012

R652. Natural Resources; Forestry, Fire and State Lands.
R652-122. Cooperative Agreements.
R652-122-100. Authority.

This rule implements subsection 65A-8-203(5)(b), which authorizes the Division to make rules concerning cooperative agreements; subsection 65A-8-203(4)(a) and subsection 65A-8-203(3)(b) which require the Division to establish minimum standards for a county wildland fire ordinance and to specify minimum standards for wildland fire training, certification, and wildland fire suppression equipment; subsection 65A-8-203.1, which defines delegation of fire management authority, and Section 65A-8-203.2, which concerns billing for costs of wildland fire suppression for counties or municipalities that do not have a cooperative agreement with the Division.

R652-122-200. Cooperative Agreements.

1. The governing body of any eligible entity, as defined in R652-1-200(13), may enter into a cooperative agreement with the division to receive financial and wildfire management cooperation and assistance, as described in 65A-8-2, Fire Control.

2. The Division shall determine the provisions of the cooperative agreement consistent with statutory requirements.

3. A cooperative agreement shall last for a term of no more than five years and be renewable if the eligible entity continues to meet the requirements.

4. An eligible entity may not receive financial cooperation or financial assistance until the cooperative agreement is executed by the eligible entity and the division.

(a) the state shall assume an eligible entity's cost of suppressing catastrophic wildfire as defined in the cooperative agreement if the eligible entity has entered into, and is in full compliance with the cooperative agreement with the division.

5. A county or municipality that has not entered into a cooperative agreement with the division, as described herein, or whose Cooperative Agreement has been revoked shall be responsible for wildland fire costs within the county or municipality jurisdiction as outlined in R652-120-1000.

6. In order to enter into a cooperative agreement an eligible entity shall:

(a) if the eligible entity is a county, adopt and enforce unincorporated land and wildland fire ordinance based upon minimum standards established by the division or Uniform Building Code Commission.

(b) agree to require that the fire department or equivalent fire service provider under contract with, or delegated by, the eligible entity on unincorporated land meet the minimum standards for wildland fire training, certification and suppression equipment based upon nationally accepted standards as specified by the division;

(c) agree to a participation commitment which requires investment in prevention, preparedness, and mitigation efforts as agreed to with the division intended to reduce the eligible entity's risk of catastrophic wildfire;

(d) agree to file with the division an annual accounting of wildfire prevention, preparedness, mitigation actions, and associated costs.

(e) agree to return the financial statement described in Subsection (6), signed by the chief executive officer of the eligible entity, to the division on or before the date set by the division.

(f) if the eligible entity is a county, agree to have a designated fire warden as described in 65A-8-209.1.

7. The division shall:

(a) send an Annual Statement to each eligible entity that details the eligible entity's participation commitment for the coming fiscal year, including the preparedness, prevention, and mitigation actions agreed to in Subsection 6(c).

(b) financial statements shall be effective for one calendar year, beginning on the date set by the division.

R652-122-300. Determination of Participation Commitment.

1. The Division shall determine a participation commitment for each entity with a cooperative agreement participating in the wildland fire suppression fund.

2. The participation commitment will be calculated by adding the Risk Assessment by Acres to the Historic Fire Cost Average in each jurisdiction.

3. An entity may appeal the participation commitment determination to the State Forester by informing the division in writing of the entity's disagreement with the Division's determination and stating the reasons for the disagreement.

4. The State Forester may hold an informal hearing or request additional information. After deliberation, the State Forester shall make a final determination of the participation commitment and communicate it to the entity.

R652-122-400. Determination of Risk Assessment by Acres.

1. The Risk Assessment by Acres is calculated using the Division's "Utah Wildfire Risk Assessment Portal" (UWRAP).

(a) county "high risk" (red) acres are assessed at $0.40/acre and county "medium risk" (yellow) acres are assessed at $0.30/acre.

(b) municipal "high risk" (red) acres are assessed at $3.50/acre and municipal "medium risk" (yellow) acres are assessed at $2.00/acre

2. UWRAP will be updated every two years by FFSL, as data sources and technology allow, to maintain the most current and defensible risk assessment.

R652-122-500. Determination of Historic Fire Cost Average.

1. Only wildfire suppression costs that are accrued and paid by the State on behalf of a participating entity are counted toward that entity's Historic Fire Cost Average, this includes State-paid costs after a Delegation of Fire Management Authority and Transfer of Fiscal Responsibility has occurred.

2. The historic fire cost average is calculated on a rolling ten-year average, dropping the highest and lowest cost years and adjusting for inflation (using the CPI); therefore, each ten-year average will have eight data points.

3. The historic fire cost average includes only suppression costs for which that entity who has fire suppression responsibility and taxation authority.

4. A county's historic fire cost average will only include state-paid suppression costs on all unincorporated land other than federal and state.

5. A municipality's historic fire cost average will only include state-paid suppression costs on all incorporated land other than federal and state.

6. An entity with both county and municipality responsibilities will include state paid suppression costs on all unincorporated land other than federal, within a county and state paid suppression costs on all incorporated land other than federal, within their jurisdiction.

R652-122-600. Annual Participation Commitment Report.

1. An entity may meet its participation commitment requirement either through direct expenditure of funds, or by "in-kind" expenditures in support of prevention, preparedness, or mitigation efforts including, but not limited to, prevention material costs, fuels crew labor costs, and other expenditures determined by the Division to be eligible towards the participation commitment.

2. The participating entity is responsible to record and account for its participation commitment actions and expenditures and to provide an annual accounting to the Division for review and approval.

3. The participating entity shall provide an annual

participation commitment report to the Division detailing the actual expenditures and activities in compliance with the participation commitment during the fiscal year.

4. The Division may request additional information related to participation expenditures and actions.

R652-122-700. Participation Commitment Carry Over.

1. The value of Participation Commitment actions may, in certain instances, "carry-over" to the next fiscal year with the approval of the respective FFSL Area Manager.

2. It is the responsibility of the Participating Eligible Entity to receive approval from their respective FFSL Area Manager in advance of pursuing a carry-over and account for, track and report the carry-over from year to year.

3. Decisions of the Area Manager may be appealed to the State Forester. The State Forester may hold a hearing or request additional information before making a final decision.

R652-122-800. Annual Participation Commitment Statement.

1. Every year, after the fire business and accounting for the prior year is finalized, the Division will send to each participating eligible entity an Annual Financial Statement containing the determination of the calculated Participation Commitment for the entity's coming fiscal year.

2. The Participating Eligible entity's chief executive officer must then sign and return the Annual Participation Commitment Statement to the Division by a due date determined by the Division, thereby acknowledging the entity's participation for the coming fiscal year.

3. Unless the division has approved an extension, if an entity fails to return the signed Annual Participation Commitment Statement to the Division by the due date, the cooperative agreement shall be considered revoked and the entity shall be withdrawn from participation in the wildland fire suppression fund.

R652-122-900. Revocation of Cooperative Agreement.

1. An eligible entity may revoke a cooperative agreement before the end of the agreement's term by:

(a) informing the division, in writing, of the eligible entity's intention to revoke the cooperative agreement; or

(b) failing to sign and return it annual participation commitment statement as described in R652-120-400(5)(e), unless an extension has been granted by the division.

2. A cooperative agreement may not be revoked before the end of the fiscal year if the participating entity signed an returned an Annual Participation Commitment Statement. The revocation will be effective the next fiscal year.

3. The Division may revoke a cooperative agreement only pursuant to Division rules and the terms of the cooperative agreement.

4. An eligible entity whose cooperative agreement has been revoked shall be responsible for the costs of wildfire suppression within in its jurisdiction for any time period during which the entity failed to meet the requirements of the cooperative agreement.

R652-122-1000. Allocation of Wildland Fire Suppression Costs to Entity Without Valid Cooperative Agreement.

1. The division shall bill an entity that has not entered into a cooperative agreement with the division as described in Section 65A-8-203, or whose agreement has been revoked pursuant to R652-121-900, for the cost of wildfire suppression accrued by the state within the jurisdiction of that entity.

2. The cost of wildfire suppression to an entity that has not entered into a cooperative agreement with the division as described in Section 65A-8-203, or whose agreement has been revoked pursuant to R652-121-900, shall be calculated by determining the number of acres burned within the borders of the entity, dividing that number by the total number of acres burned by a wildfire, and multiplying the resulting percentage by the state's total cost of wildfire suppression for that wildfire.

3. An entity that receives a bill from the division, pursuant to these rules, shall pay the bill, or make arrangements to pay the bill, within 90 days of receipt of the bill, subject to the entity's right to appeal, as described in Subsection 65A-8-203(5)(b)(vi).

R652-122-1100. Accounting System for Determining Suppression Costs.

Suppression costs for a wildland fire shall be calculated by determining the number of acres burned within the jurisdictional boundary of the entity, dividing that number by the total number of acres burned by a wildfire, and multiplying the resulting percentage by the state's total cost of wildfire suppression for that wildfire.

R652-122-1200. Delegation of Fire Management Authority.

1. Delegation of Fire Management Authority occurs when:

(a) State or Federally owned lands are involved in the incident; or,

(b) firefighting resources are ordered through an Interagency Fire Center (beyond "pre-planned dispatch"); or,

(c) at the request of the participating entity (local fire official on scene) having jurisdiction; or,

(d) at the discretion of the State Forester after consultation with local authorities.

R652-122-1300. Minimum Standards for County Wildland Fire Ordinance.

(1) The division uses the International Urban Wildland Interface Code as a basis for establishing the minimum standards discussed in this document.

(2) The Division incorporates by reference the 2003 International Code Council Urban-Wildland Interface Code as the minimum standard for wildland fire ordinance with these exceptions:

(a) Section 101.1 Delete

(b) Section 101.3 Delete "The extent of this regulation is intended to be tiered commensurate with the relative level of hazard present."

(c) Section 101.3 Second paragraph, substitute "development and" for "unrestricted"

(d) Section 101.4 Delete Exception

(e) Section 101.5 In the Exception, delete "section 402.3"

(f) Section 105.2 Delete "For buildings or structures erected for temporary uses, see Appendix A, Section A108.3, of this code"

(g) Section 105.2 Add a number 15 to the list of activities that need a permit to read "Or other activities as determined by the code official"

(h) Section 202 Delete "Critical Fire Weather, Ignition-Resistant Construction Class 1,2 and 3, Urban-Wildland Interface area"

(i) Section 202 "See Critical Fire Weather" from Fire Weather definition

(j) Section 202 Replace Fuel, Heavy definition with "Vegetation consisting of round wood 3 inches (76 mm) or larger in diameter. The amount of fuel (vegetation) would be 6 tons per acre or greater."

(k) Section 202 Replace Fuel, Light definition with "Vegetation consisting of herbaceous and round wood less than 1/4 inch (6.4 mm) in diameter. The amount of fuel (vegetation) would be 1/2 ton to 2 tons per acre."

(l) Section 202 Replace Fuel, Medium definition with "Vegetation consisting of round wood 1/4 to 3 inches (6.4mm to 76 mm) in diameter. The amount of fuel (vegetation) would

be 2 to 6 tons per acre."

(m) Section 202 Add the term Legislative Body with the following definition: "The governing body of the political jurisdiction administering this code"

(n) Section 202 Add the term Brush, Tall with the following definition: "Arbor-like varieties of brush species and/or short varieties of broad-leaf trees that grow in compact groups or clumps. These groups or clumps reach heights of 4 to 20 feet. In Utah, this includes primary varieties of oak, maples, chokecherry, serviceberry and mahogany, but may also include other species."

(o) Section 202 Add the term Brush, Short with the following definition: "Low-growing species that reach heights of 1 to 3 feet. Sagebrush, snowberry, and rabbitbrush are some varieties"

(p) Section 202 Add the term Wildland Urban Interface with the following definition "The line, area or zone where structures or other human development (including critical infrastructure that if destroyed would result in hardship to communities) meet or intermingle with undeveloped wildland or vegetative fuel."

(q) Section 301 Delete

(r) Section 302.1 Replace with " The legislative body shall declare the urban-wildland interface areas within the jurisdiction. The urban wildland interface areas shall be based on the maps created through Section 302."

(s) Section 302.2 Replace with " In cooperation, the code official and the Division of Forestry, Fire and State Lands (FFSL) wildfire representative (per participating agreement between county and FFSL) will create or review Wildland Urban Interface area maps, to be recorded and field with the clerk of the jurisdiction. These areas shall become effective immediately thereafter."

(t) Section 302.3 Add "and the FFSL wildfire representative" between "official" and "shall".

(u) Section 402.3 Delete

(v) Section 403.2 Delete Exception

(w) Section 403.3 Replace "typically used to respond to that location" to "to protect structures and wildlands"

(x) Section 403.7 Add "It will be up to the code official to ascertain the standard based on local fire equipment, grade not to exceed 12%"

(y) Section 404.1 Delete "or as required . . . with Section 402.1.2"

(z) Section 404.1 Delete Exception

(aa) Section 404.3 Delete "The draft site shall have emergency . . . with Section 402."

(bb) Section 404.5 Replace "as follows: determined" with "by the local jurisdiction. NFPA 1142 may be used as a reference."

(cc) Section 404.5.1 Delete entire section including Exception

(dd) Section 404.5.2 Delete entire section including Exception

(ee) Section 404.6 Replace with "The water system required by this code can only be considered conforming for purposes of determining the level of ignition-resistant construction (see Table 503.1)."

(ff) Section 404.8 Delete the words "and hydrants"

(gg) Section 404.9 After " . . . periodic tests as required by the code official." add the sentences "Code official shall establish a periodic testing schedule. Costs are to be covered by the water provider."

(hh) Section 404.9 After the last sentence, add "Mains and appurtenances shall be installed in accordance with NFPA 24. Water tanks for private fire protection shall be installed in accordance with NFPA 22. Costs are to be covered by the water provider."

(ii) Section 404.10.3 After ". . . dependent on electrical power" add "supplied by power grid" and after " . . . demands shall provide . . . " add "functional"

(jj) Section 404.10.3 Replace "Exceptions" in its entirety with "When approved by the code official, a standby power supply is not required where the primary power service to the stationary water supply facility is underground or on-site generator."

(kk) Section 405 Before Section 405.1 Add "The purpose of the plan is to provide a basis to determine overall compliance with this code, for determination of Ignition Resistant Construction (IRC) (see Table 503.1) and for determining the need for alternative materials and methods."

(ll) Section 405.1 After "When required by a code official, a fire protection plan shall be prepared" add the words "and approved prior to the first building permit issuance or subdivision approval."

(mm) Chapter 5, Delete Table 502

(nn) Section 505.2 Replace "Class B roof covering" with "Class A roof covering"

(oo) Section 506.2 replace "Class C roof covering" with "Class A roof covering"

(pp) Section 602 Delete

(qq) Section 603.2 Replace "for the purpose of Table 503.1" with "for individual buildings or structures on a property"

(rr) Section 603.2 Replace "10 feet or to the property line" with "30 feet or to the property line"

(ss) Section 603.2 replace "along the grade" with "on a horizontal plane"

(tt) Section 603.2 replace "may be increased" with "may be modified"

(uu) Section 603.2 Delete "crowns of trees and structures"

(vv) Add new Section 603.3 titled "Community fuel modification zones" with the following text: Fuel modification zones to protect new communities shall be provided when required by the code official in accordance with Section 603 in order to reduce fuel loads adjacent to communities and structures.

(ww) Add new Section 603.3.1 titled "Land ownership" with the following text: Fuel modification zone land used to protect a community shall be under the control of an association or other common ownership instrument for the life of the community to be protected.

(xx) Add new Section 603.3.2 titled "Fuel modification zone plans" with the following text: Fuel modification zone plans shall be approved prior to fuel modification work and shall be placed on a site grading plan shown in plan view. An elevation plan shall also be provided to indicate the length of the fuel modification zone on the slope. Fuel modification zone plans shall include, but not be limited to the following:

(i) Plan showing existing vegetation

(ii) Photographs showing natural conditions prior to work being performed

(iii) Grading plan showing location of proposed buildings and structures, and set backs from top of slope to all buildings or structures

(yy) Section 604.1 Add "annually, or as necessary" after "maintained"

(zz) Section 604.4 First sentence should read "Individual trees and/or small clumps of trees or brush crowns extending to within . . . "

(aaa) Section 607 change "20 feet" to "30 feet"

(bbb) Chapter 7 Delete

(ccc) Appendix A is included as optional recommendations rather than mandatory

(ddd) Appendix B Last sentence changed to "Continuous maintenance of the clearance is required."

(eee) Appendix C Below title, add "This appendix is to be used to determine the fire hazard severity."

(fff) Appendix C-A1. Change to "One-lane road in, one-lane road out" and points change to 1, 10 and 15.

(ggg) Appendix C-A2. Points change to 1 and 5

(hhh) Appendix C-A3 Change to 3 entries: Road grade 5% or less, road grade 5-10% and road grade greater than 10%, with points at 1,5 and 10, respectively.

(iii) Appendix C-A4. Points are now 1, 5, 8 and 10

(jjj) Appendix C-A5 Change to "Present but unapproved" for 3 points, and "not present" for 5 points

(kkk) Appendix C-B1. Fuel Types change to "Surface" and "Overstory". Surface has 4 categories -- Lawn/noncombustible, Grass/short brush, Scattered dead/down woody material, Abundant dead/down woody material; and the points are 1, 5, 10 and 15, respectively. Overstory has 4 categories -- Deciduous trees (except tall brush), Mixed deciduous trees and tall brush, Clumped/scattered conifers and/or tall brush, Contiguous conifer and/or tall brush; and the points are 3, 10, 15 and 20, respectively.

(lll) Appendix C-B2. The 3 categories are changed to "70% or more of lots completed", "30% to 70% of lots completed" and "Less than 30% of lots completed" and the points would be 1, 10 and 20, respectively.

(mmm) Appendix C-C Replace first category with "Located on flat, base of hill, or setback at crest of hill"; Replace second category with "On slope with 0-20%grade"; Replace third category with "On slope with 21-30% grade"; Replace fourth category with "On slope with 31%grade or greater"; Add fifth category that reads "At crest of hill with unmitigated vegetation below"; replace the points with 1, 5, 10, 15 and 20 for the five categories.

(nnn) Appendix C-E. Change the points to 1, 5, 10, 15 and 20.

(ooo) Appendix C-F. Drop down the second and third categories to third and fourth and insert new second category to read "Combustible siding/no deck"; The points for the four categories are 1, 5, 10 and 15.

(ppp) The new totals for "Moderate Hazard" are 50-75; "High Hazard" are 76-100; "Extreme Hazard" are 101+.

(qqq) Appendices D-H Delete

R652-122-1400. Minimum Standards for Wildland Fire Training.

1. At a minimum, the Participating Entity will ensure that firefighters providing Initial Attack to wildland fire within the Participating Entity's jurisdiction will be trained in NWCG S130 Firefighter Training and S190 Introduction to Wildland Fire Behavior. FFSL also recommends S215 Wildland Urban Interface Firefighting Operations.

(a) This includes firefighters who are directly involved in the suppression of a wildland fire; firefighters on scene who have supervisory responsibility or decision-making authority over those involved in the suppression of a wildland fire; or individuals who have fire suppression responsibilities within close proximity of the fire perimeter.

(b) This does not include a person used as a courier, driver of a vehicle not used for fire suppression, or a person used in a non-tactical support or other peripheral function not in close proximity to a wildland fire.

(c) Upon the Delegation of Fire Management Authority, Firefighters not certified by the Utah Fire Certification Council as Wildland Firefighter I will be released from Initial Attack or reassigned to other firefighting duties.

R652-122-1500. Minimum Standards for Wildland Firefighting Equipment.

(1) The following standards are applicable to equipment used by fire departments representing those counties who have cooperative wildland fire protection agreements with the State of Utah. This includes county fire departments and other fire departments which are contracted with the counties to provide fire protection on private wildland. The Utah Division of Forestry, Fire and State Lands has determined that this standard be met by June 1, 2006.

(2) Engines and water tenders used on private wildland fires within the county's jurisdiction will meet the standard for the type of equipment plus appropriate hand tools and water handling equipment as determined by the National Wildfire Coordinating Group.

TABLE 1
Engines

Component	Type 1	Type 2	Type 3
Pump Rating (gpm)	1,000+ @ 150 psi	250+ @ 150 psi	150+ @ 250 psi
Tank Capacity (gal)	400+	400+	500+
Hose 2.5 inch	1,200 ft	1,000 ft	--
Hose 1.5 inch	400 ft	500 ft	500 ft
Hose 1 inch	--	--	500 ft
Ladders	48 ft	48 ft	--
Master Stream (gpm)	500	--	--
Personnel (minimum)	4	3	2

Component	Type 4	Type 5	Type 6
Pump Rating (gpm)	50 @ 100 psi	50 @ 100 psi	30 @ 100 psi
Tank Capacity (gal)	750+	400 - 750	150 - 400
Hose 2.5 inch	--	--	--
Hose 1.5 inch	300 ft	300 ft	300 ft
Hose 1 inch	300 ft	300 ft	300 ft
Ladders	--	--	--
Master Stream (gpm)	--	--	--
Personnel (minimum)	2	2	2

TABLE 2
Water Tenders

Component	Type 1	Type 2	Type 3
Tank Capacity (gal)	5,000+	2,500+	1,000+
Pump Capacity (gpm)	300+	200+	200+
Off Load Capacity (gpm)	300+	200+	200+
Max Refill Time (min)	30	20	15
Personnel tactical/nontactical	2/1	2/1	2/1

KEY: minimum standards, wildland urban interface, cooperative agreements
January 10, 2017 65A-8-203
Notice of Continuation April 14, 2016

R652. Natural Resources; Forestry, Fire and State Lands.
R652-140. Utah Forest Practices Act.
R652-140-100. Authority and Purpose.

This rule is adopted pursuant to the authority of Subsection 65A-1-4(2), which requires the Division to promulgate rules, and by Section 65A-8a-101 et seq., to clarify the procedure through which operators must register with the Division and notify the Division of the intent to conduct forest practices.

R652-140-200. Exceptions to Forest Practice.

For purposes of Section 65A-8a-101 et seq., and this rule, the term "Forest practice" does not include the control of invasive or exotic species, removal of Pinyon-Juniper woodlands, or cutting trees for posts, poles or firewood.

R652-140-300. Procedures for Registration of Operators.

(1) To register, operators shall complete and submit a printed or electronic version of a registration form provided by the Division, which includes information required under Subsection 65A-8a-103(2).

(2) The registration form shall be submitted to the Division's headquarter office or one of the Division's six administrative area offices. Offices are located in the following areas:

(a) Headquarter Office, 1594 West North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703.

(b) Bear River Area Office, 1780 North Research Parkway, Suite 104, North Logan, UT 84341-1940.

(c) Wasatch Front Area Office, 1594 West North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703.

(d) Central Area Office, 1139 N. Centennial Park Drive, Richfield, UT 84701-1860.

(e) Northeastern Area Office, 2210 South Highway 40 Suite B, Heber City, UT 84032.

(f) Southwestern Area Office, 585 North Main Street, Cedar City, UT 84720.

(g) Southeastern Area Office, 1165 South Highway 191, Suite 6, Moab, UT 84532.

(3) Upon receipt of the registration form, the Division will acknowledge receipt by providing the operator a registration number and date of expiration and returning a copy of the registration form to the operator.

(4) Registration shall be valid for a period of five years from the date of receipt. At the end of the five-year period, the operator must renew the registration with the Division.

R652-140-400. Procedures for Notification of Intent to Conduct Forest Practices.

(1) At least 30 days prior to the commencement of a forest practice, the operator shall submit written notification of intent to conduct forest practices to the Division as required by Subsection 65A-8a-104(1). The 30 days shall commence on the date of postmark, if mailed, or on the date received if hand delivered or electronically submitted.

(2) Notifications shall be submitted to the Division's headquarter's office or one of the Division's six administrative area offices listed in Subsection R652-140-300(2).

(3) Operators shall submit a written notification on a form provided by the Division, a copy thereof or its electronic version, and include the information required under Subsection 65A-8a-104(2).

(4) Notifications submitted to the Division shall be acknowledged within ten days of receipt by the Division. The acknowledgment shall include information identified in Subsection 65A-8a-104(3).

R652-140-500. Procedures for Application, Approval, Implementation, and Monitoring of Forest Stewardship Plans.

This rule is adopted pursuant to the authority of Subsection 65A-8a-106(3), which requires the Division to promulgate rules, to clarify the procedure for application, approval, implementation, and monitoring of Forest Stewardship Plans.

(1) Forest Stewardship Plans shall include the federal components provided in the "Forest Stewardship Program National Standards and Guidelines"

(2) Forest Stewardship Plans shall be monitored consistent with federal guidelines, located in the "Forest Stewardship Program National Standards and Guidelines", and utilizing the Forest Stewardship Plan-Implementation Monitoring form.

(3) A forest landowner is required to implement those portions of a Forest Stewardship Plan that relate to the Farmland Assessment Act Section 59-2-503, which include:

(a) Timber stand improvement

(b) stream or riparian restoration

(c) rangeland improvement

KEY: registration, notification, forest practices
February 7, 2011 65A-8a-103
Notice of Continuation January 10, 2017 65A-8a-104

R671. Pardons (Board of), Administration.
R671-101. Rules.
R671-101-1. Rules.

Board of Pardons rules shall be processed according to state rulemaking procedures. The Board shall determine if the rule is to be submitted through the regular rulemaking or emergency rulemaking procedure. Rules shall then be distributed as necessary.

Any error, defect, irregularity or variance in the application of these rules which does not affect the substantial rights of a party may be disregarded. Rules are to be interpreted with the interests of public safety in mind so long as the rights of a party are not substantially affected.

KEY: pardons
February 18, 1998 77-27-9
Notice of Continuation January 5, 2017 63G-3

R671. Pardons (Board of), Administration.
R671-202. Notification of Hearings.
R671-202-1. Notification.

An offender will be notified of the date, time and place of a personal appearance hearing at least seven calendar days in advance of the hearing, except in extraordinary circumstances, and will be advised as to the purpose of the hearing.

In extraordinary circumstances, the hearing may be conducted without the seven day notification, or the offender may waive this notice requirement.

Public notice of Board hearings will also be posted one week in advance on the Board's website (www.bop.utah.gov).

Open public hearings are regularly scheduled by the Board at the various correctional facilities throughout the state.

KEY: parole, inmates
October 4, 2012 63G-3-201(2)
Notice of Continuation January 30, 2017 77-27-7(1)
77-27-9(4)(a)

R671. Pardons (Board of), Administration.
R671-203. Victim Input and Notification.
R671-203-1. General Provisions.

Pursuant to statute, the Department of Corrections shall provide the Board of Pardons with all available information concerning the impact a crime may have had upon the victim or victim's family. Pursuant to statute, the prosecutor of the case, and upon request of the Board, any other law enforcement official responsible for offender's arrest, conviction, and sentence, shall forward to the Board a victim impact statement referring to physical, mental or economic loss suffered by the victim or victim's family.

If a victim does not wish to give testimony or is unable to do so, a victim representative may be appointed by the victim, or if the victim is a minor, by the victim's parent(s) or lawful guardian or custodian, to speak on the victim's behalf. A family member of the victim may also testify if the victim is deceased as a result of the offense or if the victim is a child.

"Victim" for purposes of this Rule means:

A. Any person, of any age, against whom an offender committed a felony or class A misdemeanor offense either personally or as a party to the offense, for which a prison sentence was imposed or for which the hearing is being held;

B. In the discretion of the Board, any person, of any age, against whom a related crime or act is alleged to have been perpetrated or attempted;

C. Any victim originally named in an allegation of criminal conduct who is not a victim of the offense to which the defendant entered a negotiated plea of guilty; and

D. Any victim representative and family member as provided herein.

"Victim Representative" means a person who is designated by the victim or designated by the Board, who represents the victim in the best interests of the victim.

A victim or victim representative, who is appearing at a hearing where photographic equipment is being used by the media, will not be photographed without the approval of the victim and the individual presiding at the hearing.

Victims may contact the Board of Pardons, after any parole hearing, for information concerning the outcome of that hearing. Victims are advised that they may also contact the Utah State Prison Records Unit Supervisor for information on offender releases.

All persons attending hearings must comply with the security and clearance regulations of the facility where the hearing is held. These regulations include picture identification, appropriate dress, and no contraband. Contraband for this purpose includes but is not limited to purses/bags, cell phones, and other electronic devices. Visitors should arrive at the facility 15 to 20 minutes prior to the scheduled hearing to allow adequate time for the security clearance.

R671-203-2. Notification.

A. Notice of an offender's original parole hearing shall be timely sent to the victim at his most recent address of record with the board. The notice shall include:

(1) the date, time, and location of the hearing;

(2) a clear statement of the reason for the hearing, including all offenses involved;

(3) the statutes and rules applicable to the victim's participation in the hearing;

(4) the address and telephone number of an office or person the victim may contact for further explanation of the procedure regarding victim participation in the hearing;

(5) specific information about how, when, and where the victim may obtain the results of the hearing; and

(6) notification that the victim must maintain current contact information with the Board in order to receive future notifications of hearings affecting the offender's incarceration or parole.

B. If the victim is deceased, or the Board is otherwise unable to contact the victim, the Board shall make reasonable efforts to notify the victim's immediate family of the hearing.

C. Following the notice of the original hearing, a victim may elect to receive notice of any future parole grant hearing, parole revocation hearing or re-hearing. In order to do so, the victim shall notify the Board of the desire to receive future notices, and shall thereafter maintain current contact information with the Board.

D. For victims who elect to receive future notices, the Board will mail such notice to the victim's last current address of record or most recent contact information as provided to the Board.

R671-203-3. Right to Attend; Right to Testify.

As used in this section, "hearing" means a hearing for a parole grant or revocation, or a rehearing of either of these if the offender is present.

A victim may attend any hearing regarding the offender. A victim may testify during any hearing regarding the impact of the offense(s) upon the victim, and may present any concerns or statements regarding any decision to be made regarding the offender.

The victim may request a re-scheduling or continuance of the hearing if travel or other significant conflict prohibits their attendance at the hearing.

R671-203-4. Victim Statements and Testimony.

A. A victim, victim representative or victim's family member (if the victim is a child, deceased or unable to attend due to physical incapacity), may testify regarding the impact of the offense(s) upon the victim, and may present any concerns or statements regarding any decision to be made regarding the offender.

B. The testimony may be presented as a written statement, which may also be read aloud, if the presenter desires; or as oral testimony.

C. Oral testimony at hearings will be limited to five minutes in length per victim or representative. If a family member testifies, testimony should be limited to one family representative from the marital family (i.e. spouse or children) and/or one family representative from the nuclear/extended family (i.e. parent, sibling or grandparent). Under exceptional or extraordinary circumstances a victim may formally petition the Board to request additional testimony.

D. A victim may present testimony during the hearing outside the presence of the offender. The offender will be excused from the hearing room so that the victim can give testimony, however, the offender may be able to hear the victim speak, depending on the facility where the hearing is conducted. The victim's testimony will be recorded or otherwise made available to the offender. At the conclusion of the testimony, the offender will be returned to the hearing room, and the Board will allow the offender to respond. A separate hearing will not be scheduled to allow for testimony outside the presence of the offender.

E. Victims who desire to testify at hearings shall notify the Board as far in advance of the hearing as possible so that appropriate arrangements can be made and adequate time allocated.

F. Victims or representatives should bring a written copy of their remarks to the hearing or send a copy to the Victim Coordinator for the Board file.

G. In cases where multiple victims desire to testify, the Board may reschedule the hearing to accommodate the extra time required to hear all victims. If Board business is not concluded by 5:00 p.m. on a hearing day, all remaining hearings may be rescheduled and visitors required to return.

R671-203-5. Victim Impact Hearings.

A. In any case where an offender's original parole hearing is set by Board administrative determination more than three years from the offender's commitment to prison, the victim, as defined by R671-203-1, may request that the Board conduct a victim impact hearing, in order to preserve victim impact testimony and victim statements for future use and reference by the Board.

B. The sole purpose of a victim impact hearing is to afford an opportunity for victim impact testimony and victim statements to be made in cases where an offender's original hearing is scheduled more than three years following commitment to prison, so that the victim is not denied an opportunity to participate in the offender's original hearing, simply because of the passage of time between the offender's commitment to prison and original hearing. A victim impact hearing is not a substitute for an original hearing. A victim impact hearing will not result in a review, re-scheduling or re-determination of an original hearing date.

C. Victims who request, and for whom victim impact hearings are conducted, retain all rights afforded pursuant to constitutional provision, statute or Board rule, including: the right to notice of the original hearing and any future hearings, as provided by R671-203-1 and R671-203-2; the right to attend any hearing for the offender, as provided by R671-203-1 and R671-203-3; and the right to testify and make future statements to the Board at ant hearing for the offender, as provided by R671-203-1 and R671-203-4.

D. Upon such a request from a victim, the Board shall schedule and conduct a victim impact hearing. In scheduling and conducting a victim impact hearing:

(1) All notice provisions of R671-202-1 and R671-203 et seq. shall apply.

(2) All victim appearance, testimony and statement provisions of R671-203 shall apply.

(3) The offender shall be present, pursuant to the provisions of R671-301, and shall be afforded an opportunity to respond to the victim's testimony or statement. However, this is not an opportunity for the offender to discuss his/her conviction or potential release.

(4) The victim impact hearing shall be recorded, pursuant to the provisions of R671-304.

KEY: victims of crimes

October 4, 2012	**Art. I, Sec. 28**
Notice of Continuation January 30, 2017	**77-27-9.5**
	77-37-3
	77-37-4
	77-38-1 et seq.
	63G-3-201(3)
	77-27-1 et seq.
	77-27-9(4)

R671. Pardons (Board of), Administration.
R671-205. Credit for Time Served.
R671-205-1. Definitions.

(1) "Custody", for purposes of this rule, means that a person is held in jail or prison, and includes a person who is:

(a) in the custody of a peace officer pursuant to a lawful arrest;

(b) a minor confined in a facility operated by the Division of Juvenile Justice Services, following conviction as an adult in district court, when the district court obtained jurisdiction over the minor pursuant to Utah Code sections 78A-6-701, 78A-6-702, or 78A-6-703; or

(c) committed to the Department of Corrections, but who is housed at the Utah State Hospital or other medical facility.

(2)(a) "Sentence", for purposes of this rule, means a judgment, sentence, or commitment issued by a district court pursuant to Utah Code Section 77-18-1 for a criminal conviction and over which the Board has prison release jurisdiction.

(b) When a person is sentenced to prison after being convicted in multiple counts in the same criminal case, or after being convicted in multiple cases, credit for time served will be calculated separately for each sentence.

R671-205-2. Credit for Time Served.

(1) Credit for time served shall be granted by the Board against an offender's prison sentence for time an offender actually served in custody if, prior to being sentenced to prison, the offender was held in custody in connection with the specific sentence:

(a) while awaiting trial, conviction, or imposition of the sentence;

(b) while on probation and awaiting a hearing or decision regarding probation violation allegations;

(c) as a condition of probation following the imposition of a suspended prison sentence, if the offender is later committed to prison on or after October 1, 2015;

(d) as a sanction for a violation of probation, following the revocation and re-start or re-imposition of probation, if the offender is later committed to prison on or after October 1, 2015;

(e) as a response to a violation of probation, pursuant to the AP and P Response and Incentive Matrix, if the offender is later committed to prison on or after October 1, 2015.

(f) that is reversed, vacated, or otherwise set aside, if a subsequent prison sentence is imposed for the same criminal conduct;

(g) at the Utah State Hospital following a "guilty and mentally ill" conviction; or

(h) outside the State of Utah based solely on a Utah warrant issued in connection with the sentence under Board jurisdiction.

(2) The Board may, in its discretion, grant credit for time served in other, extraordinary circumstances.

R671-205-3. Exclusions.

Credit for time served may not be granted for any period of custody served:

(1) for an arrest, pre-trial detention, probation, commitment, case, conviction, or sentence over which the Board has no jurisdiction;

(2) at the Utah State Hospital or comparable non-prison, psychiatric facility while an offender: (a) is undergoing pre-trial competency proceedings or investigations; or (b) has been committed to a facility for competency restoration following a judicial finding of incompetence;

(3) in a medical or other treatment facility while under court supervision;

(4) under home-confinement, house arrest, in a community correctional center, or in any other treatment facility while under court supervision; or

(5) for an arrest, pre-trial detention, probation, commitment, or sentence while under the jurisdiction of the federal government.

R671-205-4. Concurrent and Consecutive Sentencing.

(1) If an offender is committed to prison for more than one sentence, credit for time served shall be calculated for each sentence separately.

(2) If an offender is committed to prison to serve consecutive sentences, only the credit for time served attributable to the consecutive sentence shall be granted against that sentence, and the consecutive sentence shall begin only following the expiration of all prior sentences.

(3) If an offender is serving one or more prison sentences, and a subsequent prison sentence is imposed concurrently, credit for time served shall begin on the date the subsequent prison sentence is imposed.

(4) If an offender is serving one or more prison sentences, and a subsequent prison sentence is imposed consecutively, credit for time served may not be granted toward the consecutive sentence, and the consecutive sentence shall begin only following the expiration of all prior sentences.

R671-205-5. Verification of Time Served Required.

(1) The Board shall only grant credit for time served if the time in custody is documented in official records of the court and facility of custody.

(2) If an offender desires credit in addition to that granted by the Board, the offender bears the burden to petition for, and provide copies of records supporting, the additional credit.

KEY: credit for time served, prison release, parole
August 11, 2015 **Art. VII Sec. 12**
Notice of Continuation January 30, 2017 **77-18-1(11)(a)(iii)**
77-18-1(12)(e)(iv)
77-27-5
77-27-7
77-27-9

R671. Pardons (Board of), Administration.
R671-207. Mentally Ill and Deteriorated Offender Custody Transfer.
R671-207-1. Transfer From the Prison to the Hospital of an Offender Whose Mental Health Has Deteriorated.

The Department of Corrections will notify the Board whenever a mentally ill offender is transferred from the Hospital to the Prison pursuant to 77-16a-204 (5).The custody transfer of an inmate, who has not been adjudicated as mentally-ill by the Court and who is housed at the Prison, whose mental health has deteriorated to the point that admission to the State Hospital is necessary to ensure adequate mental health treatment, will occur when the Prison and the Hospital agree to a transfer. The Department of Corrections will notify the Board's Mental Health Advisor whenever an offender is transferred from the Prison to the Hospital and the Board will stay any hearing until the offender is transferred from the Hospital back to the Prison pursuant to the requirements of 77-16a-204, Utah Code, and the provisions of rule R207-2, Utah Administrative Code.

If the Prison and the Hospital cannot agree upon the transfer, the Board will make the decision as to whether the transfer should occur pursuant to 62A-15-605. Upon notification by the Department of Corrections to the Board's Mental Health Advisor that the agencies cannot agree, the Mental Health Advisor will conduct an administrative hearing. Both agencies will provide written reports and recommendations to the Advisor prior to the hearing and the Advisor will take testimony at the hearing. The Mental Health Advisor will then make a recommendation pursuant to the requirement of 62A-15-605.5 to the Board. The Board will issue its decision within 30 days of the Administrative Hearing.

R671-207-2. Mentally-Ill Offender Custody Transfer.

Custody transfer of a mentally-ill offender, under the jurisdiction of the Board of Pardons and Parole, and placed by the Court at the Utah State Hospital, will occur when the Hospital and the Prison agree that the Prison can provide the mentally-ill offender with the level of care necessary to maintain the offender's current mental condition and status. The Department of Corrections will notify the Board whenever a mentally-ill offender is transferred from the Hospital to the Prison and the Board will set a date for a parole hearing.

If the Hospital and the Prison cannot agree upon the transfer, the Board will make the decision as to whether the offender should be transferred to the Prison. Upon notification from the Division of Human Services to the Board's Mental Health Advisor that the agencies cannot agree upon the transfer, the Advisor will conduct an Administrative hearing. Both agencies will provide written reports and recommendations to the Advisor prior to the hearing and the Advisor will take testimony at the hearing. The Mental Health Advisor will then make a recommendation, pursuant to the requirements of 77-16a-204, to the Board as to the transfer. The Board will issue its decision within 30 days of the Administrative Hearing.

R671-207-3. Retransfer From the Department of Corrections to the Utah State Hospital.

Custody transfer of a mentally-ill offender, under the jurisdiction of the Board, whose custody was transferred from the Utah State Hospital to the Utah State Prison may be transferred back to the Utah State Hospital when the Prison and the Hospital agree that the offender's mental condition has deteriorated or the offender has become mentally unstable to the point that admission to the State Hospital is necessary to ensure adequate mental health treatment. The Department of Corrections will notify the Board's Mental Health Advisor whenever a mentally-ill offender is transferred back to the State Hospital from the Prison. The Board will stay any hearing until the offender's mental health has been stabilized and the offender has been transferred back to the prison, in accordance with Rule R207-1, Utah Administrative Code and Section 77-16a-204, Utah Code.

If the Prison and the Hospital cannot agree upon the transfer, the Board will make the decision as to whether the offender should be transferred back to the Hospital. Upon notification form the Department of Corrections that the Prison and the Hospital cannot agree upon a transfer, the Mental Health Advisor will conduct an administrative hearing. Both agencies will provide written reports and recommendations to the Advisor prior to the hearing and the Advisor will take testimony at the hearing. The Advisor will then make a recommendation to the Board as to the transfer pursuant to the requirements of 77-16a-204. The Board will issue its decision within 30 days of the administrative hearing.

A mentally-ill offender who has been readmitted to the Utah State Hospital pursuant to these rules may be transferred back to the Department of Corrections in accordance with Rule R207-1, Utah Administrative Code and the requirements of Section 77-16a-204, Utah Code.

KEY: criminal competency
December 4, 2002 77-16a-204
Notice of Continuation January 30, 2017

R671. Pardons (Board of), Administration.
R671-301. Personal Appearance.
R671-301-1. Personal Appearance.

A. By statute, the Board or its designee is required to convene at least one public hearing for all offenders except those serving life without parole or a death sentence. In rehearings, the offender is afforded all the rights and considerations afforded in the initial hearing except as provided by other Board rules because the setting of a parole date is still at issue.

B. An offender has the right to be present at a parole grant, rehearing, or parole violation hearing if in the state (UCA 77-27-7). The offender may speak, present documents, ask, and answer questions. In the event an offender waives this right to appear, or refuses to personally attend the hearing, the Board may proceed with the hearing and issue a decision.

C. If an offender is housed out of state, the Board may proceed as follows:

1. The offender may waive the right to be present, and the Board may then conduct the hearing in absentia.

2. The Board may request the Department of Corrections to return the offender to the state for the hearing.

3. The Board may seek that a courtesy hearing be conducted by the appropriate paroling authority of the custodial state. A request along with a complete copy of Utah's record shall be forwarded for the hearing. All reports, a record of the hearing, and a recommendation shall be returned to the Utah Board for final action.

4. An individual Board member or designee may travel to the custodial facility and conduct the hearing, record the proceeding, and make a recommendation for the Board's final decision.

5. A hearing may be conducted by videoconference or conference telephone call.

KEY: inmates, parole
October 4, 2012 **63G-3-201(3)**
Notice of Continuation January 30, 2017 **77-27-7(2)**
77-27-9(4)(a)

R671. Pardons (Board of), Administration.
R671-302. News Media and Public Access to Hearings.
R671-302-1. Open Hearings.

According to state law and subject to fairness and security requirements, Board hearings shall be open to the public, including representatives of the news media. However, the Board shall only accept testimony or comments from the offender and specific individuals as provided in R671-203 and R671-308.

R671-302-2. Limited Seating.

When the number of people wishing to attend a hearing exceeds the seating capacity of the room in which the hearing will be conducted, priority for admission and seating shall be given to:

1. Individuals involved in the hearing
2. Victim(s) of record.
3. Up to five people selected by the victim(s) of record.
4. Up to five people selected by the offender.
5. Officials designated or approved by the Board.
6. Up to five members of the news media as allocated by the Board or its designee.
7. Members of the public and media on a first come basis.

R671-302-3. Security and Conduct.

All attendees are subject to prison security requirements and must conduct themselves in a manner which does not interfere with the orderly conduct of the hearing. Any individual causing a disturbance or engaging in behavior deemed by the Board to be disruptive of the proceeding may be ordered to leave and security personnel may be requested to escort the individual from the premises. All persons granted admission to a hearing must have a picture identification and subject themselves to the security regulations of the custodial facility.

R671-302-4. Executive Session.

Board executive sessions are closed sessions with no access. No filming, recording or transmitting of executive session portions of any hearing will be allowed.

R671-302-5. News Media Equipment.

(a) Subject to prior approval by the Board or its designee, news agency representatives will be permitted to operate photographic, recording or transmitting equipment during the public portions of any hearing. When more than one news agency requests permission to use photographic, recording or transmitting equipment, a pooling arrangement may be required.

(b) When it is determined by the Board or its designee, that any such equipment or operators of that equipment are causing a disturbance, are interfering with, or have the potential to cause a disturbance or interfere with an orderly, fair and impartial hearing, restrictions may be imposed to eliminate those problems.

(c) Any instant uploading of images recorded at the site of a hearing, or while a hearing is in progress, must be approved by the Board or its designee in advance of the hearing.

Photographing, recording and/or transmitting the image of a victim testifying before the Board is prohibited unless approved by the victim and the individual presiding over the hearing.

R671-302-6. Prior Approval.

News media representatives wishing to use photographic, recording or transmitting equipment or to be considered for one of the five reserved media seats shall submit a request in writing to the Board or its designee. Such requests must be submitted in compliance with the policy and procedures of the Department of Corrections. If requesting the use of equipment, the request must specify by type, all the pieces of equipment to be used.

R671-302-7. Approving Equipment.

(a) Requests to use photographic, recording or transmitting equipment, must be made at least forty-eight (48) hours prior to a regularly scheduled hearing and ninety-six (96) hours prior to a Commutation Hearing.

(b) It is the responsibility of the news agency, or their representative, making the request to contact and confer with the Board's designee in order to work out logistical, access and all other details of such use.

(c) If the Board's designee is unfamiliar with the equipment proposed to be used, he or she may require that a demonstration be performed to determine if it is likely to be intrude, disturb or inhibit the orderly, fair and impartial hearing in any way. Any equipment causing a disturbance or distraction will be removed from the premises.

(d) Digital cameras and recording equipment are approved equipment.

(e) If equipment is approved for use at a hearing, its location and mode of operation shall be approved in advance by the Board's designee. Any approved equipment will remain in a stationary position during the entire hearing and will be operated as unobtrusively as possible.

(f) No artificial lighting may be used during a hearing, or in the hearing room, in conjunction with the use of any photographic, recording or transmitting equipment.

(g) If there are multiple requests for the same type of equipment, news agencies will be required to make pool arrangements, as no more than one piece of the same type of equipment will be allowed. If no agreement can be reached regarding pooling arrangements, the Board, or its designee, will make the determination and assignment. Any news agency or representative so designated and assigned as the pool representative shall promptly provide all photographs, recordings or footage to all other media agencies and personnel who are deemed a part of the pool.

R671-302-8. Reserved Media Seating.

(a) If five or fewer requests for media seating are received prior to the deadline, all requests will be approved. If more than five requests for media seating are received, the Board's designee will allocate the seating based on a pool arrangement. Each media category will select its own representative(s). If no agreement can be reached regarding pool representative(s), the Board's designee will make the determination and assignment. Any person wishing to be a pool representative must agree in advance to fully cooperate with all pool arrangements.

(b) One seat will be allocated to each of the following media categories:

1. Local daily newspapers with statewide circulation;
2. Major wire services with local bureaus;
3. Local television stations with regularly scheduled daily newscasts;
4. Local radio stations with regularly scheduled daily newscasts;
5. Web-based media.
6. If the requests submitted do not fill all of the above categories, a seat will be allocated to a representative of a major wire service with no local bureau or a national publication (in that order).
7. If seats remain unfilled, one additional seat will be allocated to the categories in the above order until all seats are filled. No news agency will have more than one individual assigned to reserved media seating unless all other requests have been satisfied.

R671-302-9. Violations.

Any news agency found to be in violation of this policy

may have its representatives restricted in or banned from covering future Board hearings.

KEY: news agencies
October 31, 2016 63G-3-201(3)
Notice of Continuation January 30, 2017 77-27-1 et seq.
77-27-9(4)(a)

R671. Pardons (Board of), Administration.
R671-303. Information Received, Maintained or Used by the Board.
R671-303-1. Information Received, Maintained or Used by the Board.

(1) Offender Access to Information

(a) Absent a security or safety concern, as determined by the Board, an offender will be provided access to the information being considered by the Board and given an opportunity to respond to such information, whenever the Board sets or extends the offender's parole or release date. If the Board determines offender access to information presents a security or safety concern, the offender will be provided a written summary of the material information being considered.

(b) The Board, upon request or upon its own motion, may continue a hearing to allow submission of additional documentation or information. The Board will consider any relevant facts obtained at the hearing or later submitted by the offender, provided such later submitted information is received within fourteen (14) days following the hearing.

(c) The Board will provide an offender with a copy of the records not provided for previous hearings and contained in the offender's file at least three days prior to any personal appearance hearing in which a parole or release date may be fixed or extended by the Board. Any additional information obtained by the Board after this initial disclosure will be provided to the offender at the beginning of the hearing. In such event, the offender will be given an opportunity to review the supplemental information before proceeding. If no additional time is requested by the offender, the hearing will proceed as scheduled.

(d) For administrative routings to fix an original hearing date, the Board will only consider information available to the court at the time of sentencing. This information will be disclosed to the offender at the time of an original hearing.

(2) Submission of Information

(a) Other than concise and brief letters, or statements by the offender, all other materials, briefs or written memoranda or argument submitted by or on behalf of any person, in preparation for a hearing (excluding commutation hearings governed by Rule R671-312), shall be limited to no more than five (5) pages in length.

(b) Photographs may be submitted but should be relevant to the offense. The Department of Corrections limits the number of photographs that an inmate may possess and photographs of victims are contraband. Therefore the Board will disclose photographs at the beginning of a hearing. The offender may view the photographs but not retain them. As noted in section (1) the offender may request additional time to respond or submit supplemental information.

(c) Submissions by legal counsel for or on behalf of an offender must be received by the Board no later than seven (7) days prior to any scheduled hearing.

(d) The Board reserves the right to strike from the offender's file, and to refuse to accept or consider any material or submissions which are irrelevant, defamatory, or which do not otherwise conform to this rule.

KEY: inmates' rights, inmates, parole, records
April 7, 2015 63G-2
Notice of Continuation January 30, 2017

R671. Pardons (Board of), Administration.
R671-304. Hearing Record.
R671-304-1. Hearing Record.

The Board will cause a record to be made of all public hearings and dispositions.

R671-304-2. Procedure.

A record will be made of all board hearings pursuant to UCA 77-27-8 (1). The record will be kept at the Board of Pardons and Parole offices for five (5) years. Upon written request a copy of the record may be purchased.

KEY: government hearings

October 4, 2012	**63G-3-201(3)**
Notice of Continuation January 30, 2017	**77-27-1 et seq.**
	77-27-8
	77-27-9(4)(a)

R671. Pardons (Board of), Administration.
R671-305. Board Decisions and Orders.
R671-305-1. Board Decisions and Orders.

Decisions of the Board will be reduced to a written order. Orders entered following original hearings, re-hearings, special attention hearings, parole violation hearings, evidentiary hearings, and rescission hearings will be accompanied by a brief rationale for the order. The Board's written orders and rationale statements are public documents. A copy of the order, and rationale statement if entered, shall be provided or mailed to the person who is the subject of the order. The Board shall maintain a copy of all orders entered in each case. The Board may publish its orders on its website at its discretion and convenience.

KEY: government hearings

April 7, 2015	**Art VII, Sec 12**
Notice of Continuation January 30, 2017	**63G-3-201(3)**
	77-27-9(4)(a)
	77-27-10

R671. Pardons (Board of), Administration.
R671-308. Offender Hearing Assistance.
R671-308-1. Offender Hearing Assistance.

Offenders who are deemed by the Board or a Hearing Official to be unable to effectively represent themselves at a hearing may be allowed to have any assistance the Board determines is necessary to conduct an orderly hearing. This may include a Board-appointed representative.

R671-308-2. Offender Legal Counsel -- Parole Revocation Hearings.

(a) The Board may appoint or assign an attorney to represent offenders at parole violation hearings, including evidentiary hearings, at State expense, unless the offender is the subject of a new criminal conviction for which an initial or original hearing is scheduled.

(b) An offender may choose instead to be represented by their own attorney during parole revocation hearings at the offender's own expense.

(c) Any attorney appearing or representing an offender in parole revocation hearings shall be admitted and licensed to practice law within the state of Utah, as defined by Utah Code Ann. Section 78A-9-103 (1953, as amended) and must comply with the Board's Administrative Rules, including Rule R671-103, Attorneys.

R671-308-3. Offender Legal Counsel -- All Other Hearings.

(a) Except in parole revocation hearings as set forth in this rule, an offender or petitioner has no right, requirement, or entitlement to legal representation or appointed counsel before the Board or during or in connection with any Board hearing, review, or decision.

(b) No attorney or other person appointed or employed by an offender to assist in any matter or hearing before the Board may testify, speak, or otherwise address the Board during a hearing except as provided in this rule. Only the offender, a person appointed by the Board to assist an offender pursuant to this rule, or a victim as provided for by Utah law may present testimony or comment during a hearing.

(c) If a pardon or commutation petitioner appoints or employs an attorney at their own expense, to appear or represent the petitioner before the Board, the Board may allow the attorney to participate at the pardon or commutation hearing. Any attorney appearing or representing a petitioner at a commutation or pardon hearing must meet the requirements of Subsection R671-308-2(c) and must comply with the Board's Administrative Rules.

KEY: parole, inmates
October 31, 2016 **77-27-5**
Notice of Continuation January 10, 2017 **77-27-9**
77-27-11
77-27-29
78A-9-103

R671. Pardons (Board of), Administration.
R671-310. Rescission Hearings.
R671-310-1. Rescission Hearings.

Any prior Board decision may be reviewed and rescinded by the Board at any time until an offender's actual release from custody.

If the rescission of a release or rehearing date is being requested by an outside party, information shall be provided to the Board establishing the basis for the request. Upon receipt of such information, the offender may be scheduled for a rescission hearing. The Board may also review and rescind an offender's release or rehearing date on its own initiative. Except under extraordinary circumstances, the offender should be notified of all allegations and the date of the scheduled hearing at least seven calendar days in advance of the hearing. The offender may waive this period.

In the event of an escape, the Board will rescind the inmate's date upon official notification of escape from custody and continue the hearing until the inmate is available for appearance, charges have been resolved and appropriate information regarding the escape has been provided.

The hearing officer will conduct the hearing and make an interim decision to be reviewed, along with a summary report of the hearing, by the Board members.

KEY: parole, inmate

February 18, 1998	**77-27-5**
Notice of Continuation January 30, 2017	**77-27-6**
	77-27-11

R671. Pardons (Board of), Administration.
R671-311. Special Attention Reviews, Hearings and Decisions.
R671-311-1. Special Attention Reviews and Decisions.

(1) The Board may use special attention reviews or hearings to adjust parole conditions, review prior board decisions, and modify prior decisions when exceptional circumstances exist.

(2) Special attention reviews shall be initiated by Board staff when necessary to correct clerical or other errors in Board orders, or upon the receipt of a written request explaining the exceptional circumstances for which modification is sought.

(3) Exceptional circumstances which may result in a special attention review and decision may include, but are not limited to:

(a) clerical errors in a prior order;

(b) changes to the special conditions of parole requested by the Department of Corrections (Department);

(c) determination of restitution obligations;

(d) payment of restitution obligations prior to release;

(e) reinstatement of a rescinded release prior to a rescission hearing;

(f) modification of a prior decision due to changes in credit for time served as calculated by the Board;

(g) modification of a prior decision due to changes in applicable guidelines as calculated by the Board;

(h) granting alternative events in lieu of revocation for parole violations;

(i) imposing parole violation sanctions pursuant to a request from the Department and a waiver from the offender;

(j) granting incentives and parole condition changes pursuant to a request from the Department;

(k) exceptional performance or progress in the institution;

(l) case action plan completion or compliance over a significant period of time;

(m) Earned Time adjustments made pursuant to R671-311-3;

(n) exceptional circumstances not previously considered by the Board; or

(o) review of new and significant information not previously considered by the Board.

(4) Unless the request for a special attention review is made by the Department or Board staff, the Board shall request that the Department review the request, and make a recommendation.

(5) Special attention requests that are repetitive, frivolous, or lacking in substantial merit shall be summarily denied and placed in the offender's file without formal action or response.

(6) Unless otherwise ordered by the Board, special attention reviews shall be processed administratively based on written or electronic reports supplied to the Board without the personal appearance of the offender.

R671-311-2. Special Attention Hearing.

(1) The Board may schedule a special attention hearing if it determines that a personal appearance hearing will assist in making a decision regarding a special attention request.

(2) A special attention hearing shall be scheduled if an alternative parole violation sanction is to be imposed and the offender requests a hearing.

R671-311-3. Earned Time Adjustments.

(1) Earned Time adjustments shall reduce the period of incarceration for offenders who have been granted a release from prison and who successfully complete recidivism risk reduction programming or objectives, as defined and specified herein.

(2) Definitions.

(a) "Adjustment" means:

(i) a reduction of an offender's period of incarceration when a release date has been ordered by the Board; and

(ii) has the same meaning as "credit" as used in Utah Code Ann. Section 77-27-5.4.

(b) "Case Action Plan" means the plan, developed by the Department pursuant to Utah Code Ann. Subsection 64-13-1(1), that identifies the program priorities that will reduce the offender's criminal risk factors as determined by a risk and needs assessment.

(c) "Department" refers to the Utah Department of Corrections and any of its divisions, bureaus, or departments.

(d) "Earned time adjustment" has the same meaning as, and comprises the program mandated in, Utah Code Ann. Section 77-27-5.4 and as defined in this Rule.

(e) "Forfeiture" and "Forfeiture of Earned Time Credits" as used in Utah Code Ann. Subsection 77-27-5.4(4) means that a release date granted by the Board following an earned time adjustment is rescinded due to a major disciplinary violation, new criminal conviction, new criminal activity, or other similar action committed by the offender.

(f) "Programming" means a component, objective, requirement, or program identified in an offender's case action plan that:

(i) meets the minimum standards and qualifications for programs established by the Department pursuant to Utah Code Ann. Section 64-13-7.5 or 64-13-25; and

(ii) has been shown by scientific research to reduce recidivism by addressing an offender's criminal risk factors.

(g) "Successful completion" means that an offender has completed a case action plan component, objective, requirement or programming and has earned a completion rating of "successful" as determined by standards set by the Department.

(3) Earned Time Adjustments.

(a) An offender shall earn an adjustment of four months for the successful completion of a program identified by the Department as pertaining to, satisfying, or applying within the highest ranked priority in the offender's case action plan.

(b) An offender shall earn an adjustment of four months for successful completion of one additional program as identified by the Department in the offender's case action plan.

(c) The earned time adjustment shall change the previously ordered release date, resulting in a reduction in the length of incarceration.

(d) If an offender earns a time adjustment prior to a Board decision setting release, the earned time and programming completion shall be considered by the Board when making subsequent release decisions.

(e) The Board, in its discretion, may grant earned time adjustments in excess of four months to recognize additional or extraordinary programming performance or achievement.

(4) Exclusions:

(a) Offenders whose previously ordered release date does not provide enough time for the adjustment may not be granted a full earned time adjustment, but shall receive a partial adjustment if the previously ordered release date allows for the same.

(b) Earned time adjustments may not be used to change an offender's original hearing as scheduled by the Board.

(c) Offenders who have been sentenced to life without parole are ineligible for earned time adjustments.

(d) Offenders who have been ordered by the Board to serve a life sentence to expiration are ineligible for earned time adjustments.

(e) Earned time adjustments may not be granted for a second or subsequent completion of the same classes, programs, or case action plan priorities during the same term of incarceration without an intervening release.

(5) The Department shall notify the Board, within 30 days, of an offender's successful completion of a case action plan

program that is eligible for an earned time adjustment.

KEY: parole, inmates, sentences, time cut
October 15, 2015 **Art. VII, Sec. 12**
Notice of Continuation January 30, 2017 **63G-3-201(3)**
64-13-1
64-13-7.5
64-13-25
77-27-1 et seq.
77-27-5.4
77-27-7
77-27-5
77-27-6
77-27-9(4)(a)
77-27-10(2)(b)
77-27-11

R671. Pardons (Board of), Administration.
R671-315. Pardons.
R671-315-1. Pardons.

1. A pardon is an act of grace that forgives a criminal conviction and restores the rights and privileges forfeited by or because of the criminal conviction. A pardon releases an offender from the entire punishment prescribed for a criminal offense and from disabilities that are a consequence of the criminal conviction. A pardon reinstates any civil rights lost as a consequence of conviction or punishment for a criminal offense.

2.(a) The Board may consider an application for a pardon from any individual who has been convicted of an offense in the state of Utah, after the applicant has exhausted all judicial remedies, including expungement, in an effort to ameliorate the effects of the conviction.

(b) The Board will accept and consider a pardon application only after at least five years has passed since the sentence for the conviction and any enhancement period has terminated or expired.

(c) The Board will not consider pardons for infractions.

3.(a) A person seeking a pardon from the Board must complete and file, to the Board's satisfaction, an application in a form approved by the Board.

(b) No pardon application will be accepted unless it has been signed by the person whose convictions are sought to be pardoned.

(c) Posthumous pardon applications will not be accepted or considered.

(d) A pardon application will not be considered unless the applicant is able and willing to personally attend the pardon hearing.

4. In addition to the completed application, Board staff shall obtain and provide relevant information including, but not be limited to:

(a) all police reports concerning the conviction for which the applicant is seeking a pardon;

(b) all pre- or post- sentence reports prepared in connection with any sentence served in jail or prison, and for any conviction for which the applicant is seeking a pardon;

(c) the applicant's inmate files;

(d) a recent BCI report, NCIC report, and III report concerning the applicant;

(e) verification from the applicant that all imposed restitution, fines, fees, or surcharges have been paid in full; and

(f) verification from the applicant that the applicant completed therapy programs ordered by any court or by the Board.

5.(a) Board staff shall summarize all information collected or submitted regarding the application and provide the application and additional information to the Board.

(b) Board staff shall disclose to the applicant, prior to the hearing, all information obtained or received by the Board regarding the pardon application which is not from the applicant.

(c) The Board may request additional information from staff or from the applicant.

6. Once complete, and if otherwise compliant with all Board rules, the pardon application and all available relevant information will be considered by the Board, which shall vote to grant or deny a pardon hearing.

7. If a pardon hearing is granted:

(a) notice of the hearing shall be published on (i) the Board's web site; and (ii) the Utah Public Notice web site; and

(b) for each conviction which is the subject of the pardon hearing, notice of the hearing shall be mailed or otherwise sent to:

(i) any victim of record, if the victim can be located;

(ii) the arresting or investigative agency;

(iii) the sentencing court; and

(iv) the respective prosecutor's office.

8. In furtherance of the Board's obligation to conduct a full and fair hearing, the following pardon hearing procedures apply:

(a) The pardon applicant shall personally appear and shall be required to testify. The applicant may designate a few family members or other supporters to offer testimony at the hearing, if time allows.

(b) Any victim of a conviction for which a hearing has been scheduled may offer testimony, or may submit written material concerning the pardon request. Any victim may designate a representative to testify or speak on the victim's behalf at a pardon hearing.

(c) An authorized representative of the arresting or investigative agency, sentencing court or prosecutor's office for each conviction which is the subject of the hearing may offer testimony or may submit written material concerning the pardon request.

(d) The Board may subpoena any person to attend and testify at a pardon hearing if it determines that such testimony will aid the Board in making a decision regarding the pardon request.

(e) Any person not otherwise specified in this rule may submit letters in support of or in opposition to a pardon request.

(f) All testimony or written material regarding a pardon request must be relevant, and must comply with all other Board administrative rules.

(g) Statements or other material submitted regarding a pardon application or hearing:

(i) may not be submitted anonymously;

(ii) may not be based upon hearsay; and

(iii) shall only be based upon the personal knowledge or opinion of the person submitting the statement or material.

(h) The Board may refuse to accept, remove from an offender's file or pardon application, or refuse to consider any statement or material submitted which is irrelevant, defamatory, hearsay, or which does not otherwise conform to Board rules.

9. A pardon hearing may be conducted by the full board, or by a panel or a single board member assigned by the board chair. If conducted by a panel of the board, the board chair may appoint members to the panels in any combination.

10. The Board may grant a conditional pardon or an unconditional pardon. The petitioner will be notified in writing of the results as soon as practicable.

11. The Board may grant or deny a pardon by majority vote. Pardon decisions are final and are not subject to judicial review.

12. Upon granting a pardon, the Board shall issue an expungement order, directing any criminal justice agency to remove the recipient's identifying information relating to the expunged convictions from its records.

(a) An expungement order, issued by the Board, has the same legal effect and authority as an order of expungement issued by a court, pursuant to Title 77, Chapter 40, Utah Expungement Act.

(b) The board shall provide clear written directions to the pardon recipient along with a list of agencies known to be affected by the expungement order.

13. The Board may dispense with any requirement created by this rule for good cause.

KEY: pardons

July 7, 2016	**Art. VII Sec. 12**
Notice of Continuation January 30, 2017	**77-27-1(14)**
	77-27-5
	77-27-5.1
	77-27-9

R671. Pardons (Board of), Administration.
R671-316. Redetermination.
R671-316-1. Redetermination Review.

(1) Redetermination is a process whereby the Department of Corrections (Department) or an offender may request that the Board review new, material, and significant information, or reconsider a prior decision.

(2) Redetermination of a previous decision may be considered if:

(a) the time requirements of this rule are met;

(b) the offender has no new criminal convictions since the entry of the decision for which redetermination is sought;

(c) the offender has no pending major disciplinary violations; and

(d) the Board finds that a significant and material change in circumstances has occurred which it has not previously considered.

(3) The Department or an offender may submit a redetermination request, asking the Board to reconsider a prior decision, if:

(a) the decision ordered the expiration of a life sentence, and at least ten years have passed since the Board's decision or any subsequent redetermination decision;

(b) the decision ordered a release, rehearing, or expiration of any sentence not involving the expiration of a life sentence, and at least five years have passed since the Board's decision or any subsequent redetermination decision; or

(c)(i) the decision set an original hearing for a homicide offense, pursuant to Utah R. Admin. P. R671-201-1(3)(a);

(ii) the original hearing was set more than fifteen years following the offender's arrival at the prison; and

(iii) at least ten years have passed since the administrative review decision or any subsequent redetermination decision.

(4) A redetermination request shall:

(a) clearly and specifically state the reasons supporting the redetermination request;

(b) include a current report detailing the offender's case action plan compliance, treatment participation and history, disciplinary history, and current risk assessment; and

(c) be signed by the offender if not submitted by the Department.

(5) If the request for redetermination is not submitted by the Department, the Board may request that the Department review the request, provide any updated institutional, medical, or other report requested by the Board, and make a recommendation regarding the request.

(6) The Board may make a decision regarding a redetermination request with or without a hearing.

(7) If the Board denies a redetermination request, the decision shall be accompanied by a brief statement or rationale giving the reason for the denial.

KEY: parole, inmates
October 15, 2015 **Art. VII, Sec. 12**
Notice of Continuation January 30, 2017 **63G-3-201(3)**
77-27-5
77-27-9

R671. Pardons (Board of), Administration.
R671-402. Special Conditions of Parole.
R671-402-1. General.

A. The Board may add special conditions to a standard parole agreement. Special conditions are generally intended to help hold an offender accountable or to help rehabilitate an offender.

B. At any time during an offender's incarceration or parole, the Board may amend the parole agreement on its own initiative, at the request of the Department of Corrections, or other interested parties. The offender shall be afforded a personal appearance hearing to discuss the proposed changes, unless the hearing is waived.

KEY: parole
October 4, 2012 **63G-3-201(3)**
Notice of Continuation January 30, 2017 **77-27-5**
77-27-6
77-27-9
77-27-10
77-27-11

R671. Pardons (Board of), Administration.
R671-403. Restitution.
R671-403-1. General Provisions.

(1) If the Board determines that a court has previously ordered or determined restitution applicable to any conviction, or that restitution is owed to any victim as a result of the conduct for which an offender was convicted, or any related conduct as authorized by state law to be considered, the Board may order restitution:

(a) as a condition of parole;

(b) as a contingency to be satisfied prior to release from prison incarceration earlier than sentence expiration; or

(c) to be converted to a civil judgment, pursuant to the provisions of applicable state law.

(2) The Board may, pursuant to the provisions of state law, determine and order an offender to pay restitution at any time while the offender is under the Board's jurisdiction, when:

(a) restitution has been ordered by the sentencing court;

(b) pecuniary damages to a victim occurred as a result of the offender's criminal conduct but were not determined or ordered by the sentencing court;

(c) requested by the Department of Corrections (Department) or other criminal justice agency.

(d) pecuniary damages to any person or entity are caused by an offender's disciplinary violation, conduct, or behavior arising during incarceration;

(e) new information regarding restitution is submitted to the Board which was not available or considered at the time of sentencing or a prior restitution determination; or

(f) the Board determines a restitution order is otherwise appropriate.

(3) Restitution determinations shall be:

(a) based upon a preponderance of the evidence; and

(b) made by a majority vote of the Board.

(4) When determining restitution, the provisions of Utah Code Sections 77-38a-302(1) and 77-38a-302(5)(a)-(b) shall apply.

(5) The Board may determine and order restitution based upon:

(a) prior orders made by a sentencing court;

(b) prior orders involving the same crimes, events, or incidents made by a court in the case of a co-defendant;

(c) amounts and determinations included in pre-sentence reports; or

(d) information received regarding restitution claimed or owed that the Board determines is relevant and reliable.

R671-403-2. Court-Ordered Restitution.

(1) The Board shall affirm restitution ordered by a court in accordance with Utah Code section 77-38a-302.

(2) An offender shall resolve objections regarding restitution entered by a court with the applicable court.

(3) The Board is not an appellate authority or forum in which to litigate restitution amounts previously ordered by a court.

(4) An offender may submit evidence of payments, credits, or offsets for consideration by the Board when determining restitution.

(5) The offender bears the burden to prove the validity and amounts of all payments, credits, or offsets submitted for consideration.

(6) If restitution was not determined or ordered by the sentencing court, the Board may, within one year of the imposition of sentence, refer the case back to the court for determination of restitution.

R671-403-3. Restitution Included in Pre-Sentence Report.

(1) If any party fails to challenge the accuracy of the restitution determinations, amounts, or information contained in a presentence report at the time of sentencing, that matter shall be considered waived, pursuant to Utah Code section 78-38a-203(2)(d), and the Board may order restitution based upon the information in the presentence investigation report.

(2) An offender may submit evidence of payments, credits, or offsets for consideration by the Board when determining restitution.

(3) The offender bears the burden to prove the validity and amounts of all payments, credits, or offsets submitted for consideration.

R671-403-4. Initial Restitution Determination.

(1) If restitution is not determined and ordered by the Board pursuant to R671-403-2 or R671-403-3, the Board may make an initial determination of restitution based upon the totality of the information available, including:

(a) restitution determinations made by a court applicable to a co-defendant for the same criminal conduct or the same victim;

(b) statements made by a victim, offender, or co-defendant relating to restitution, including statements made as part of a pre-sentence report investigation;

(c) reports or calculations provided by the Department indicating the amount which should be ordered as restitution;

(d) statements made in any civil or criminal proceeding;

(e) statements made in documents provided to the Board; or

(f) statements made during Board hearings.

(2) When the Board determines an initial restitution amount, the Board or the Department shall:

(a) inform the offender of the initial restitution determination; and

(b) inform the offender that any objection to the initial restitution determination must be filed with the Board in accordance with this rule.

(c) If the offender agrees with, or does not object to, the initial restitution determination, that restitution amount shall be ordered by the Board.

(d) If the offender objects to the initial restitution determination, the offender shall inform the Board of the objection and request a restitution hearing.

(e) The offender's objection and request for a hearing shall be:

(i) submitted to the Board in writing within 30 days of the initial restitution determination;

(ii) accompanied by a clear, brief statement explaining the offender's objections;

(iii) refer to or be accompanied by an explanation of any evidence, documents, or the names and addresses of witnesses upon which the offender will rely to support the objection.

(f) Following receipt of an offender's objection which complies with this section, the Board may modify the initial restitution amount based upon the materials submitted by the offender, or may schedule a restitution hearing.

(g) An offender's objection and request for a restitution hearing may be denied if the Board finds that the material submitted by the offender is duplicative, erroneous, lacks relevance or reliability, or fails to state a reason why the initial restitution determination should be modified.

(h) Failure of an offender to file a timely objection or otherwise comply with the requirements of this section shall waive and forfeit an offender's ability to contest a restitution order by the Board based upon the initial restitution determination.

R671-403-5. Restitution Hearings - Informal Resolution of Objection.

(1) Following the receipt of a timely objection to an initial restitution determination, the Board may designate a hearing

officer or other Board employee to informally, and without hearing, attempt to resolve the offender's concerns or objections.

(2) This informal resolution may involve correspondence or an interview or other meeting with the offender.

(3) If an offender's objections to an initial restitution determination are not resolved, the Board shall schedule a restitution hearing.

R671-403-6. Restitution Hearings - Procedure.

(1) Restitution hearings may be conducted by a Board member, hearing officer, or other designee of the Board Chair.

(2) Board staff, the Department,the Attorney General's office, the original prosecuting agency, the offender, and any victim may participate in the restitution hearing, as necessary.

(3) Board staff may assist non-lawyer hearing participants with subpoenas to procure the attendance of necessary witnesses.

(4) The rules of evidence do not apply at restitution hearings.

(5) The offender bears the burden of proving all objections or assertions, including any payments, credits, or offsets, by a preponderance of the evidence.

(6) If any amount of restitution is claimed by, or on behalf of, any victim, in addition to any amount previously determined by a court or by the Board, including the initial restitution determination, the proponent of such additional restitution carries the burden of proving such additional restitution by a preponderance of the evidence.

(7) Any party may submit documentation, records, or other written evidence for the Board to consider regarding the issue of restitution.

(8) Within 30 days after the hearing, the Board shall enter an order determining the amount of restitution owed by the offender, or continue the matter for additional information, further hearing or further consideration as needed.

R671-403-7. Modifications to Restitution Orders.

Modifications to restitution orders may occur:

(1) upon a waiver and stipulation of the offender;

(2) upon receipt of new or subsequent court orders;

(3) when restitution claims, damages, or costs continue to accrue after sentencing;

(4) upon consideration of offender restitution payments, credits for payments made by others on the offender's behalf, offsets due to insurance or other third-party payments, or modifications based upon property being returned to a victim after the conclusion of court proceedings;

(5) when an open or on-going claim exists with the Utah Office for Victims of Crime;

(6) following an informal resolution regarding new restitution claims or offsets; or

(7) following subsequent restitution hearings.

R671-403-8. Compliance With Restitution Orders.

(1) While the offender is under Department or Board jurisdiction, the Department shall enforce the Board's restitution orders and parole conditions.

(2) As part of parole, the Board expects that parolees will make regular monthly payments based on the offender's ability to pay and in amounts sufficient to satisfy the restitution obligation during the parole period.

(3) The Board and the Department have jurisdiction over, and may continue to enforce restitution orders, in cases which may have terminated on or after July 1, 2005, if the Board has had continuing jurisdiction over the offender in any other case.

(4) The Department shall track cases for restitution payment and notify the Board in a timely manner of any action needed regarding restitution orders, payments, or lack of payment.

(5) If any restitution ordered by the Board or by a court has not been paid in full prior to a parole termination request, the Department shall inform the Board, as part of the termination request:

(a) how much of the offender's restitution obligation has been paid;

(b) how much of the restitution obligation, including post-judgment interest, remains unpaid;

(c) why the restitution obligation was not paid in full during the term of parole; and

(d) why parole should not be revoked or re-started because the restitution amounts were not paid in full during the parole period.

(6) If any restitution ordered by the Board or by a court has not been paid in full prior to a parole termination request, the Board may deny the parole termination request.

R671-403-9. Unpaid Restitution - Civil Judgments.

(1) If upon parole termination, sentence termination, termination of Board jurisdiction, or sentence expiration, an offender owes outstanding restitution, or if the Board makes an order of restitution within 60 days following the termination or expiration of the defendant's parole or sentence, the unpaid restitution shall be referred by the Board to the district court for the entry of a civil judgment and for civil collection remedies.

(2) The Board shall forward a restitution order to the sentencing court to be entered on the judgment docket. The entry shall constitute a lien and is subject to the same rules as a judgment for money in a civil judgment.

(3) If the Board has continuing jurisdiction over the offender for a separate criminal offense, the Board may defer seeking a civil judgment for restitution until termination or expiration of all of the offender's sentences. The restitution obligation for the terminating or expiring case shall be made a condition of parole for any separate or subsequent offense under continuing jurisdiction.

(4) The Board may order conversion of restitution to a civil judgment at any time, provided that the restitution amount was determined and ordered by:

(a) a Court;

(b) the Board during its jurisdiction over the offender; or

(c) the Board within 60 days following parole termination, sentence termination, sentence expiration, or other termination of Board jurisdiction.

KEY: restitution, government hearings, parole

November 30, 2015	**Art. VII, Sec. 12**
Notice of Continuation January 5, 2017	**64-13-30**
	64-13-33
	77-18-1(6)(b)
	77-22-5
	77-27-6
	77-27-9(4)(a)
	77-27-10
	77-30-24
	77-38a-203(2)(d)
	77-38a-302

R671. Pardons (Board of), Administration.
R671-405. Parole Termination.
R671-405-1. General Provisions.

(1) When an offender is granted parole, the offender shall remain on parole until:

(a) the offender's maximum parole term has been served;

(b) the Board grants a discretionary parole termination and discharge of the offender's sentence, pursuant to Utah Admin. Rule R671-405-3;

(c) the Board grants an earned parole termination and discharge of the offender's sentence, pursuant to Utah Code Subsections 64-13-21(7), 76-3-202(1)(a) and Utah Admin. Rule R671-405-4; or

(d) the offender's parole is revoked, the offender is found in violation of parole, the offender agrees to re-start parole in lieu of a parole violation or revocation proceeding, or the offender is confined during the parole period.

(2) "Maximum Parole Term" for purposes of this rule is the expiration date of an offender's combined sentences, or the last day of the offender's legislative parole term, as set forth in Utah Code Section 76-3-202, whichever occurs first.

R671-405-2. Termination Request Reports.

All parole termination requests or notices submitted by the Department of Corrections (Department) shall include or be accompanied by a report which includes:

(1) the offender's identification information, supervising agent information, and agent contact information;

(2) any incentives granted to, or sanctions imposed on the offender by the Department during the term of parole supervision;

(3) the number of total months on parole during which the offender was compliant with all conditions of parole and the offender's case action plan;

(4) a current risk assessment, score, and risk level;

(5) the results of a current sex offender treatment exit polygraph, if the offender is on parole for a sex offense or if requested by the Board;

(6) an update on the offender's case action plan progress, compliance, and completion and a recommendation from the Department whether parole should be extended to allow successful completion of any necessary treatment program identified in the case action plan which has not yet been completed;

(7) an update regarding the offender's compliance with or completion of all special conditions of parole; and

(8) a summary which details the offender's payment of restitution obligations or orders, and if restitution has not been paid in full, an explanation of the non-payment, and the efforts the Department has made to collect restitution.

R671-405-3. Discretionary Termination of Parole.

(1) The Department may request that the Board terminate any offender's parole at any time prior to the final day of the offender's maximum parole term.

(2) The Department shall submit, with the request for early termination of parole, a termination report which contains the information set forth in Rule 405-2 of this rule.

(3) Written notification of the Board's decision regarding the request for parole termination shall be provided to the offender through the Department.

R671-405-4. Earned Early Termination of Parole.

(1) When the Department determines that an offender has earned an early termination of parole, pursuant to Utah Code Subsection 64-13-21(7), it shall notify the Board within 30 day and request that the Board terminate the parole of the offender.

(2) The Department shall submit, with the request for earned early termination of parole, a termination report which contains the information set forth in Rule 405-2 of this rule.

(3) Upon receipt and verification of the Department's earned early termination request, the Board shall terminate the offender's parole, unless the Board determines that:

(a) the offender is currently in violation of parole;

(b) the offender violated the terms and conditions of parole at any point during parole, and the violation was not reported to the Board;

(c) the Board determines that the offender was awarded credit toward the earned early termination for a month in which the offender violated the terms and conditions of parole; or

(d) the Board determines that early parole termination would interrupt the completion of a necessary treatment program, identified in the offender's case action plan.

(4) Written notification of the Board's decision regarding the request for earned early parole termination shall be provided to the offender through the Department.

KEY: sentencing, parole

November 30, 2015	**Art. VII, Sec. 12**
Notice of Continuation January 30, 2017	**64-13-21(7)**
	76-3-202
	77-27-1(18)
	77-27-5
	77-27-7(4)
	77-27-9
	77-27-11
	77-27-12

R704. Public Safety, Emergency Management.
R704-3. Local Government Emergency Response Loan Program.
R704-3-1. Authority.
This rule is authorized by Section 53-2a-609.

R704-3-2. Purpose.
The purpose of this rule is to establish criteria, procedures, and requirements for the administration of the Local Government Emergency Response Loan Fund described in Section 53-2a-607.

R701-3-3. Definitions.
(1) Terms used in this rule are defined in Sections 53-2a-102, 53-2a-203, and 53-2a-602.
(2) In addition to the terms referenced in Subsection R701-3-3(1):
(a) "fund" means the Local Government Emergency Response Loan Fund;
(b) "loan" means a loan provided by the Division from the Local Government Emergency Response Loan Fund to an eligible local government entity for costs incurred for providing emergency disaster services as defined in Section 53-2a-602.

R701-3-4. Application.
(1) A local government entity wishing to apply for a loan from the fund shall submit to the Division:
(a) an application on a form approved by the Division;
(b) documentation that establishes a local disaster declaration for which the loan is being requested;
(c) documentation certified by the entity's chief financial officer stating that the entity has:
(i) established a local government disaster fund; and
(ii) deposited a minimum average of 5% of total estimated revenues into a local government disaster fund established in accordance with Section 53-2a-605 for at least five fiscal years previous to the date the disaster is declared; and
(d) documentation that establishes costs incurred by the local government entity for disaster recovery and supports the dollar amount of the loan being requested.

R701-3-5. Eligibility Review.
(1) The Division shall determine if the applicant:
(a) has fulfilled the application requirements in Section R701-3-4; and
(b) meets the eligibility criteria in Sections 53-2a-607 and 53-2a-608.

R701-3-6. Prioritization of Awards for Loan Applications.
(1) In accordance with Subsection 53-2a-609(2), the Division will consider the following criteria in prioritizing and awarding loans:
(a) the total account balance available in the fund;
(b) the severity or scale of the disaster or emergency that has been declared;
(c) the severity of the impact to local government entities that have submitted loan applications; and
(d) other sources of funding that might be available to the local government entity for the purpose of disaster recovery; and
(e) the likelihood the loan amount will be paid repaid in accordance with Section 53-2a-608 based on the local government entity's bond rating.

R701-3-7. Making Loans.
(1) Loan funds shall be obligated after all documents to secure a loan are complete, processed, approved, and appropriately signed by the applicant and the director.
(2) Disbursement of loan proceeds to the borrower will take place within 10 business days of the closing date of the loan.

R701-3-8. Servicing the Loans, Loan Repayment and Late Penalties.
(1) Loans will be serviced by the Division of Finance.
(2) Loan repayment schedules are outlined in Section 53-2a-608.
(3) The initial installment payment is due on a date established by the Division.
(4) Subsequent installment payments are due on the tenth day of each month.
(5) Loan payments may be made in advance or the remaining principal balance of the loan may be paid in full at any time without penalty.
(6) Penalties for late loan payments shall be:
(a) ten percent of the payment due;
(b) assessed and payable on payments received by the Division more than 15 days after the due date;
(c) assessed only once per scheduled payment; and
(d) noticed to the borrower with the amounts of penalty and the total payment due.
(7) Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Division by methods other than the U.S. Postal Service.
(8) If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.
(9) Notice of loans paid in full shall be sent after all penalties, interest, and principal have been paid.

R701-3-9. Recovering on Defaulted Loans.
(1) Loans may be considered in default when two consecutive payments are past due by 30 days or more.
(2) If the loan is determined to be in default under Subsection R701-3-9(1), the Division or the Division of Finance may declare the full amount of the defaulted loan, penalty and interest immediately due.
(3) The Division or Division of Finance need not give notice of default prior to declaring the full amount due and payable.
(4) The borrower shall be liable for attorney's fees and collection costs for defaulted loans, whether incurred before or after court action.

KEY: disaster recovery loans, local government disaster loans

January 12, 2017	**53-2a-607**
	53-2a-608
	53-2a-609

R708. Public Safety, Driver License.
R708-2. Commercial Driver Training Schools.
R708-2-1. Authority.

This rule is authorized by Section 53-3-505.

R708-2-2. Purpose.

Sections 53-3-501 through 509 require the Driver License Division to administer the Commercial Driver Training Schools Act by licensing and regulating commercial driver training schools and instructors of these schools. Rule R708-2 assists the division in implementing these sections.

R708-2-3. Definitions.

(1) "Crime of moral turpitude" means an offense under the statutes of this state or any other jurisdiction, which under the rules of evidence may be used to impeach a witness or includes:

(a) theft;
(b) tax evasion;
(c) issuing bad checks;
(d) deceptive business practices;
(e) perjury;
(f) extortion;
(g) falsifying government records;
(h) receiving stolen property;
(i) sex offenses;
(j) driving under the influence and alcohol related reckless driving;
(k) assault; and
(l) domestic violence offenses.

R708-2-4. Testing Only School Limitations.

(1) A testing only school may conduct behind-the-wheel or observation instruction, or both, upon approval by the division.

(2) A testing only school may not engage in education or training of persons, either practically or theoretically, to drive motor vehicles except under one of the following circumstances:

(a) when counseling the driver following a test in reference to errors made during the administration of the test; or

(b) when conducting behind-the-wheel or observation instruction as approved by the division.

(3) A tester may not test an individual who has completed any behind the wheel or observation instruction through the testing only school with which the tester is employed.

R708-2-5. Licensing Requirement for a Commercial Driver Training School.

(1) Every corporation, partnership or person who owns a commercial driver training school shall obtain a license from the division. Commercial driver training school license applications may be obtained from the Driver License Division at 4501 South 2700 West, Salt Lake City, Utah. Applicants are also responsible for obtaining any business licenses required by the municipality or county in which they are located. Commercial driver training School and business licenses must be conspicuously displayed in the licensee's principal place of business and branch offices. Each commercial driver training school shall be inspected by a division representative before it can be licensed.

(2) A license expires one year from the date of issued. The fee for an original license is $100. The annual fee for a renewal license is $100. The annual fee for each branch license is $30. Fees shall be payable to the Department of Public Safety. When a license is revoked, refused issuance, or reinstatement, no part of the fee will be refunded.

(3) Licenses are not transferable.

(4) When a license is lost or destroyed, a duplicate shall be issued upon payment of a fee of $10. A notarized affidavit setting forth the date the license was lost or destroyed and the surrounding circumstances shall be submitted to the division.

(5) When any commercial driver training school or branch office is discontinued, the commercial driver training school or branch office license shall be surrendered to the division within five days. The licensee shall state in writing the reason for the surrender.

(6) Any branch office or classroom facility in a location other than the commercial driver training school's principal place of business shall be separately licensed. A branch office shall meet the same requirements as the commercial driver training school's principal place of business and shall be similarly equipped and perform substantially the same services. Application for a branch office license shall be made on an application form provided by the division. Branch offices shall be inspected by a division representative before they may be licensed.

(7) Before becoming licensed, each commercial driver training school shall employ a licensed operator to operate the commercial driver training school and each branch office. The current licensed operator shall be identified on the application maintained by the division for each commercial driver training school or branch office. A single operator may operate multiple branch offices of the same school. When the operator discontinues employment with the commercial driver training school, a new operator shall be employed before continuation of operations and the operations of any branch offices for which the individual has been identified as the operator.

(a) An individual may not be employed with more than one commercial driver training school or testing only school at a time.

(8) Unless one school has been designated by the division as a testing only school, two or more schools owned by separate individuals and owned under different school names may not operate from the same facility or office space. A clear separation of the schools shall be identified, and each school shall comply with standards set forth in Rule R708-2.

(9) Each school or classroom facility shall post signs to identify the school by name as the school is listed on the school certification.

R708-2-6. Licensing Requirement for a Testing Only School.

(1) Every corporation, partnership or person who owns a testing only school shall obtain a school license from the division. School license applications may be obtained from the Driver License Division at 4501 South 2700 West, Salt Lake City, Utah. Applicants are also responsible for obtaining any business licenses required by the municipality or county in which they are located. School and business licenses must be conspicuously displayed in the licensee's principal place of business and branch offices. Each school shall be inspected by a division representative before it may be licensed.

(2) A license expires one year from the date of issue. The fee for an original license is $100. The annual fee for a renewal license is $100. The annual fee for each branch license is $30. Fees shall be payable to the Department of Public Safety. If a license is revoked, refused issuance, or reinstatement, no part of the fee will be refunded.

(3) Licenses are not transferable.

(4) When a license is lost or destroyed, a duplicate shall be issued upon payment of a fee of $10. A notarized affidavit setting forth the date the license was lost or destroyed and the surrounding circumstances shall be submitted to the division.

(5) When any school or branch office is discontinued, the school or branch office shall surrender its license to the division within five days. The licensee shall state in writing the reason for surrender.

(6) Any branch office in a location other than the school's principal place of business shall be separately licensed. A branch office shall meet the same requirements as the school's

principal place of business and shall be similarly equipped and perform substantially the same services. Application for a branch office license shall be made on an application form provided by the division. A division representative shall inspect branch offices before they may be licensed.

(7) An individual may not be employed with more than one commercial driver training school or testing only school at a time.

(8) Unless one school has been designated by the division as a testing only school, two schools owned by separate individuals and owned under different school names may not operate from the same facility or office space. A clear separation of the schools shall be identified, and each school shall comply with standards set forth in Rule R708-2.

(9) Each school or classroom facility shall post signs to identify the school by name as the school is listed on the school certification

(10) It is not required that a testing only school maintain a classroom facility in the school or branch office location. A testing only school location and branch office shall have a designated area in which to maintain required files and records.

R708-2-7. Application for a Commercial Driver Training School License or a Testing Only School License.

(1) Application for an original or renewal commercial driver training school license or a testing only school license shall be made on forms provided by the division, signed by the applicant, and notarized. In the case of a partnership, the application shall be signed by each partner.

(2) In the case of a corporation, the application shall be signed by an officer of the corporation. Applications must be submitted at least 60 days prior to licensing. An appointment shall be made when the application is filed to have the school inspected by a division representative.

(3) Every application shall be accompanied by the following supplementary documents:

(a) samples of each form, receipt, and curriculum to be used by the school;

(b) a schedule of fees for each services to be performed by the school;

(c) a fingerprint card for each applicant, partner or corporate officer. A Bureau of Criminal Identification check shall be done by the division on each applicant, partner, and corporate officer. Applicants are responsible for paying the cost associated with the criminal history check. Fingerprints may be taken by any law enforcement agency. The division may require renewal applicants to submit new fingerprint cards and pay the cost associated with the criminal history check;

(d) a certificate of insurance for each vehicle used for driver training or testing purposes;

(e) a copy of each test and criterion, with answers, that the school requires in order for a student to satisfactorily complete the driver training course which are subject to approval of the division; including copies of translations;

(f) evidence that a surety bond has been obtained by the school in compliance with Section R708-2-8; and

(g) a certified copy of a certificate of incorporation as required in a case of a corporation.

(4) The division may require that a credit check be performed for each applicant. Based on the results of the credit check, the division may deny certification.

R708-2-8. Surety Bond Requirements.

(1) The amount of the surety bond shall be determined by the division with the use of a formula that incorporates the number of students that the school is capable of instructing over a period of three months based on its facility, equipment, personnel, and the tuition that would be collected from each student, with a minimum requirement of $5,000 coverage and a maximum requirement of $60,000 coverage.

(2) When, at any time, there is a change in the number of instructors, the number of vehicles, or the size of the classroom facility, the division shall reevaluate the amount of the required surety bond and adjust it accordingly.

(3) Cancellation of the surety bond is grounds for revocation, probation, or refusal to issue or renew the school license. A school designated by the Department of Public Safety as a testing only school may not be required to obtain a surety bond unless it has been authorized by the division to conduct behind-the-wheel training.

(4) A school that does not charge tuition for driver education is not required to maintain a surety bond.

R708-2-9. Application Requirements for a Commercial Driver Training School Instructor License.

(1) Every person who serves as an instructor in a commercial driver training school, including the owner, operator, partner or corporate officer of the licensee, substitute or part-time instructor, shall obtain an instructor's license from the division. This license shall be valid only for the specific driver training school listed on the license.

(2) A license expires one year from issue date. The fee for an original license is $30. The annual fee for a renewal license is $20. Fees shall be payable to the Department of Public Safety. If a license is revoked, refused issuance, or refused renewal, no part of the fee shall be refunded.

(3) Licenses are not transferable.

(4) When an instructor license is lost or destroyed, a duplicate shall be issued upon payment of a fee of $6. A notarized affidavit setting forth the date the license was lost or destroyed and the surrounding circumstances shall be submitted to the division.

R708-2-10. Application Requirements for a Commercial Driver Training School Operator License.

(1) Every person who serves as an operator of a commercial driver training school, including the owner, operator, partner or corporate officer of the licensee, substitute or part-time instructor, shall obtain an operator license from the division. This license shall be valid only for the specific driver training school listed on the license.

(2) A school operator license is not valid unless accompanied by a valid instructor license.

(a) Requirements for licensure as a school operator include:

(i) six college semester credit hours;

(ii) eight college quarter credit hours in business related courses through an accredited college or university;

(iii) two years experience operating a business; or

(iv) any combination thereof.

(b) An applicant for operator shall submit evidence by form of transcripts or resume as proof of this requirement.

(c) Each potential school operator shall submit to the division a business plan. The plan shall contain written acknowledgement of reading, understanding, and a willingness to comply with Rule R708-2. The plan shall also describe how the school will meet the requirements of R708-2. The division shall approve the business plan prior to licensure.

(d) Individuals functioning in the capacity of a commercial driver training school operator prior to January 1, 2003, shall not be required to comply with Subsection R708-2-10(2)(c).

(3) An expired license expires one year from the date issued.

(4) Licenses are non-transferable.

(5) When an operator license is lost or destroyed, a duplicate shall be issued upon request. A notarized affidavit setting forth the date the license was lost or destroyed and the surrounding circumstances shall be submitted to the division.

R708-2-11. Additional Requirements for Commercial Driver Training School Instructors.

(1) In addition to obtaining a license, a commercial driver training school instructor shall:

(a) have a valid Utah driver license;

(b) be at least twenty one years of age;

(c) have at least three years of driving experience in the United States, Canada, or a country with which the state of Utah has established a license reciprocity agreement;

(d) have a driving record free:

(i) of a conviction for a moving violation; or

(ii) of a chargeable accident resulting in suspension or revocation of the driver license during the two year period immediately prior to application and during employment;

(e) be checked to determine if there is an unsatisfactory driving record in any state;

(f) be in acceptable physical condition as required by Section 12;

(g) complete specialized professional preparation in driver safety education consisting of at least 21 quarter hours, or 14 semester hours of credit as approved by the division. Of the 21 quarter hours or 14 semester hours, one class shall be in teaching methodology and another class shall include basic driver training instruction or organization and administration of driver training instruction;

(h) pass a written test given by the division which may cover the following:

(i) commercial driver training school rules;

(ii) traffic laws;

(iii) safe driving practices;

(iv) motor vehicle operation;

(v) teaching methods and techniques;

(vi) statutes pertaining to commercial driver training schools;

(vii) business ethics;

(viii) office procedures and record keeping;

(ix) financial responsibility;

(x) no fault insurance;

(xi) procedures involved in suspension or revocation of an individual's driving privilege;

(xii) material contained in the "Utah Driver Handbook"; and

(xiii) traffic safety education programs;

(i) pass a practical driving test;

(j) pass the same standard eye test that is given to applicants who apply for a Utah operator or commercial driver license; and

(k) submit a fingerprint card for a criminal history check and pay the cost associated with the criminal history check.

(2) Commercial driver training schools shall be responsible for sponsoring, controlling, and supervising the actions of instructors.

(a) No school may knowingly employ any instructor if the instructor has been convicted of or there are reasonable grounds to believe that the instructor has committed a felony or a crime of moral turpitude.

(3) The instructor's license must be in the possession of the instructor at all times while providing behind-the-wheel or classroom instruction.

R708-2-12. Application and Medical Requirements for a Commercial Driver Training School Instructor License.

(1) Application for an original or renewal instructor's license shall be made on forms provided by the division, signed by the applicant and notarized. Applications shall be submitted at least 60 days prior to licensing.

(2) The original and each yearly renewal application shall be accompanied by a medical profile form provided by the division and completed by a health care professional as defined in Subsection 53-3-302(2).

(3) The medical profile form shall indicate any physical or mental impairments that may preclude service as a commercial driver training school instructor. The physical examinations shall take place no earlier than three months prior to application.

(4) The commercial driver training school desiring to employ the applicant as an instructor shall sign the application verifying that the applicant is employed by the school.

(5) When deemed necessary by the division, an applicant seeking to renew an instructor's license may be required to take a driving skills test.

(6) When deemed necessary by the division, an applicant seeking to renew an instructor license may be required to resubmit a fingerprint card for a criminal history check and pay the cost associated with the criminal history check.

R708-2-13. Additional Training Requirements.

All holders of school licenses, operator licenses, and instructor licenses may at the discretion of the division be required to attend training by the division regarding new statutes or rules.

R708-2-14. Classroom and Behind-The-Wheel Instruction.

(1) Classroom instruction for students shall meet or exceed 18 hours and shall be conducted in not less than nine separate class sessions on nine separate days of two hours per class. Each classroom session shall be numbered to be identified on the student record. Classroom curriculum may not be repeated in any of the nine sessions provided to a student except in the form of a review of materials covered in a previous classroom session.

(a) The time frame allotted for review is not to exceed 10 ten minutes per classroom session. Not more than five of the classroom hours may be devoted to showing slides or films. Instructors shall not use or do anything that may distract their attention away from the classroom instruction,. For example, use of phones or other electronic devices, reading, sleeping, or helping walk-in customers while conducting any classroom training.

(b) Classroom instruction shall cover the following areas:

(i) attitudes and physical characteristics of drivers;

(ii) driving laws with special emphasis on Utah law;

(iii) driving in urban, suburban, and rural areas;

(iv) driving on freeways;

(v) basic maintenance of the motor vehicle;

(vi) affect of drugs and alcohol on driving;

(vii) motorcycles, bicycles, trucks, and pedestrian's in traffic;

(viii) driving skills;

(ix) Utah's motor vehicle laws regarding financial responsibility and no fault insurance, and a driver's responsibility when involved in an accident; and

(x) suspension or revocation of a driver license.

(2) Behind-the-wheel includes instruction a student receives while driving a commercial driver training vehicle or while operating a driving simulator. Instruction shall include a minimum of six hours of instruction in a dual-control vehicle with a licensed instructor. Each student shall be limited to a maximum of two hours of behind-the-wheel instruction per day. An instructor may not conduct more than ten hours of behind-the-wheel instruction within a period of 24 hours and must have at least eight consecutive hours of off-duty time between each ten hour shift.

(a) The instructor and no more than one student shall occupy the front seat of the vehicle. Under no circumstances shall there be more than five individuals in the vehicle. Instructors shall not use or do anything that may distract their attention away from the student driver. Instructors may not use cellular phones or other electronic devices, read, sleep, or

engage in other similar distracting behaviors while conducting behind-the-wheel training.

(b) behind-the-wheel instruction shall include student practice in using vehicle controls to start, shift gears, make right and left turns, stop, backup, and park. This instruction shall begin under relatively simple conditions and progress until the student has acquired reasonable skill in operating the vehicle under varying traffic conditions;

(c) students shall receive experience in driving on urban streets, open highways, or freeways. Behind-the-wheel instruction shall include the experience of driving under variable conditions which may be used by the instructor at different times of the day and year. Special emphasis should be given to teaching students to show courtesy to other drivers and pedestrians;

(d) students may receive behind-the-wheel training in a driving simulator. If the simulator is fully interactive the student will receive behind-the-wheel training in the ratio of two hours driving the simulator and receive one hour of behind-the-wheel driving. If the simulator is non-fully interactive the student will receive behind-the-wheel training in the ratio of four hours driving the simulators and receive one hour of behind-the-wheel driving. An instructor shall be present at all times during all simulator training. The division shall approve all simulators prior to training.

(e) each student will be limited to a maximum of either two hours of behind-the-wheel instruction or two hours of simulation instruction per day;

(f) students shall receive a minimum of six hours of observation time to observe the instructor, other student drivers and other road users. This instruction may include instructor demonstrations, for which hour for hour credit will be given, and may not exceed two hours per day. Students observing from the rear seat, as well as the student driver, should benefit from time in the vehicle. The instructor's role is not merely to provide driving experience for the student behind-the-wheel, but to make the vehicle a practical classroom on wheels where all students may learn about the problems which face a driver and the appropriate solution to such problems;

(g) behind-the-wheel instruction may not be conducted for a student unless the student has been issued a learner permit by the division or the student is in possession of a valid Utah driver license, a temporary permit issued by the division, or a valid out of state or out of country driver license; and

(h) while conducting behind-the-wheel instruction, students and instructors shall adhere to any driving restrictions listed on the learner permit.

(3) All classroom and behind-the-wheel instruction shall be conducted by an individual who is licensed as a commercial driver training school instructor as specified in Rule R708-2.

(a) Unless the division grants approval to a commercial driver training school to provide classroom instruction from an unlicensed expert, such as a police officer on a limited basis, the school may not conduct classroom or behind-the-wheel instruction or allow another individual to conduct classroom or behind-the-wheel instruction without an instructors license.

(4) Commercial driver training schools shall provide each student a copy of the current Utah Driver Handbook. The handbook may not be used as the sole text of the course, but as an essential aid when Utah traffic laws are studied. Handbooks may be obtained by the commercial driver training schools from the division.

R708-2-15. Extended Learning Course.

(1) A commercial driver training school may offer an extended learning course of instruction as a substitute for the classroom instruction set forth in Section R708-2-11 provided an institution of higher learning and the division approve the course.

(2) An institution of higher learning shall direct any operations of an extended learning course. The institution of higher learning shall notify the division in writing when it has approved a commercial driver training school's extended learning course. The institution of higher learning will monitor any approved extended learning course to ensure the course runs as originally planned.

(a) The institution of higher learning shall notify the division of any substantive changes in the course as well as any approval of changes. The institution of higher learning may approve the extended learning course of more than one commercial driver training school.

(3) An extended learning course shall consist, at a minimum, of:

(a) a text;

(b) a workbook; and

(c) a 50 question competency test that addresses the subjects described in Subsection R708-2-11.

(4) All materials, including texts, workbooks, and tests, used in the course shall be submitted by the commercial driver training school to the division for approval.

(5) The average study time required to complete the workbook exercises shall meet or exceed 30 hours.

(6) An extended learning student must complete all workbook exercises.

(7) An extended learning student shall pass the 50 question written competency test with a score of 80% or higher.

(8) Testing shall occur under the following conditions:

(a) the extended learning student shall take the test at the commercial driver training school or proctored testing facility approved by the division;

(b) the identity of the extended learning student shall be verified by the licensed instructor prior to testing;

(c) the extended learning student shall complete the test without any outside help;

(d) the commercial driver training school shall maintain, at least, three separate 50- question competency tests created from a test pool of at least 200 questions;

(e) the extended learning student shall be given a minimum of three opportunities to pass the test. After each failure, the commercial driver training school or approved proctored testing facility shall provide the student with additional instruction to assist the student to pass the next test;

(f) the original fees for the course shall include the three opportunities to pass the test and any additional instruction required;

(g) an extended learning student shall pass the test in order to complete driver training; and

(h) the commercial driver training school shall maintain for four years records of all tests administered. Test records shall include the results of all tests taken by every student.

R708-2-16. Completion Certificates.

(1) Upon completion of the requirements of the driver training course, the commercial driver training school shall release to the student a form consisting of a certificate of training and a certificate of completion that shall be signed by the instructor.

(2) The student shall present the certificate of completion to the division when the student makes application for a driver license.

(3) Duplicate certificates of completion may be obtained for $5.

(4) After the division has provided notice to a commercial driver training school of intent for agency action to occur, it is a violation of Rule R708-2 for the commercial driver training school to allow students to enroll in a driver training course to accept money from students.

(5) In the event the division revokes or refuses licensure

renewal to the commercial driver training school, access to the division record keeping program will be denied immediately.

R708-2-17. Commercial Driver Training Vehicles.

(1) Commercial driver training vehicles used for behind-the-wheel instruction shall be properly registered, maintained in safe mechanical condition, and equipped with the following:

(a) functioning dual control brakes;

(b) outside and inside mirrors for the driver for the purpose of observing rearward;

(c) inside mirror for the instructor, for the purpose of observing rearward;

(d) a separate seat belt for each occupant;

(e) functioning heaters and defrosters; and

(f) a functioning fire extinguisher, first aid kit, safety flares and reflectors.

(2) Students shall receive instruction in either standard shift or automatic transmission vehicles. The commercial driver training school shall have the option of choosing the type of transmission.

(3) If instruction is given in snow or on icy road surfaces, tire chains or snow tires shall be used in compliance with local police or highway patrol recommendations.

(4) Vehicles shall be capable of passing a state safety inspection at all times during their instructional use. Failure to maintain a vehicle in safe operating condition is grounds for the revocation of the license of the commercial driver training school operating the vehicle. The division may require additional safety testing of the vehicle in addition to the state safety inspection. The commercial driver training school will be responsible for any additional costs that may be assessed.

(5) Vehicles unable to meet safety standards shall be replaced by the commercial driver training school.

(6) It is the responsibility of the commercial driver training school to notify the division of any vehicle added to or deleted from their fleet. No vehicle may be used for driver training until it passes inspection by the division.

(7) Each vehicle used by a commercial driver training school for driver training shall be properly identified to safeguard against accidents. A vehicle is properly identified when the words "STUDENT DRIVER" are displayed on the front and rear and on both the left and right sides of the vehicle. The letters shall be at least three inches in height.

(8) Advertising or other markings on the vehicle for identifying or advertising the commercial driver training school shall be approved by the division and should not distract from the words "STUDENT DRIVER".

R708-2-18. Notification of Accident.

If any driver training vehicle is involved in an accident during the course of instruction, the commercial driver training school shall notify the division in writing within five working days of the date of the accident and submit to the division a copy of the investigating law enforcement officer's accident report as soon as it is available.

R708-2-19. Insurance.

(1) Each commercial driver training school or testing only school must file with the division evidence of the minimum required insurance with an insurance company authorized to do business in Utah. Each commercial driver training school or testing only school shall maintain suitable insurance coverage on each vehicle used in the driver training program sufficient to protect the instructor, students, and the public. The minimum insurance coverage is that required by the Utah Insurance Code, in Title 31A, Chapter 22, Part 3.

(2) The insurance company supplying the policy shall furnish to the division a certificate of insurance and shall notify the division immediately upon cancellation of the insurance. Operation of a vehicle without the required minimum insurance coverage shall be grounds for revocation of the license.

R708-2-20. Contracts.

(1) A student shall not be given lessons, lectures, tutoring or any other service relating to instruction in driver training, unless a written contract approved by the division has been executed by the commercial driver training school and the student.

(a) Both the student and a representative of the commercial driver training school authorized to enter into a contract and listed on the application shall sign the contract. When the student is under 18 years of age, the contract shall also be signed by a parent or legal guardian prior to any instruction.

(2) A copy of the contract shall be given to the student and the original retained by the commercial driver training school.

(3) The commercial driver training school shall provide the student with a receipt upon payment. The commercial driver training school shall maintain a copy of all receipts.

R708-2-21. Records.

(1) Each commercial driver training school shall use the division's record keeping computer program to maintain the following:

(a) records for all students showing name, date of birth, type of training, date, exact time of day for the beginning and ending of all training administered;

(b) names of the instructors giving lessons or instruction; and

(c) identification of the vehicle license plate number or simulator in which any behind-the-wheel and observation instruction is given.

(2) Records shall be updated within 24 hours of instruction for each student.

(a) maintain original copies of the student contracts and receipts, current vehicle insurance information, and surety bond information;

(3) Each commercial driver training school:

(a) shall maintain accurate and current records;

(b) shall review the records of all schools at least annually; and

(c) may observe the instruction given both in the classroom and behind the wheel.

(4) The division shall review the operation of the commercial driver training school when the division deems necessary.

(5) The loss or destruction of any record that a commercial driver training school is required to maintain shall be immediately reported by affidavit stating:

(a) the date the record was lost or destroyed; and

(b) the circumstances involving the loss or destruction.

(6) The commercial driver training school shall retain all records for four years.

(7) When deemed necessary by the division, the commercial driver training school shall make the records available for the purpose of conducting an audit.

(a) When making the records available for audit purposes, the division shall provide a receipt to the commercial driver training school operator which will include:

(i) the name and location of the commercial driver training school;

(ii) the date of removal of records;

(iii) information that specifies all records removed;

(iv) the signature of the operator; and

(v) the signature of a division representative.

(8) Upon return of the records, the receipt shall be updated to reflect the date the records were returned, the signature of the operator, and the signature of the division representative

returning the records.

(9) The division shall hold the records for the minimum amount of time necessary so an audit may occur without creating an unnecessary hardship or inconvenience.

(a) Each commercial driver training school shall provide all records to the division immediately upon request for the purpose of an audit or review. When a hearing occurs subsequent to an audit, records not provided by the commercial driver training school at the time of the audit may not be considered as evidence during the hearing.

R708-2-22. Advertising and School Location.

(1) Commercial driver training schools and testing only schools may not imply or expressly guarantee that a driver license is assured. The display of a sign such as "Driver License Secured Here" is prohibited.

(2) A commercial driver training school or testing only school may display on its premises a sign reading, "This School is Licensed by the State of Utah."

(3) No commercial driver training school or testing only school may solicit business directly or indirectly or display or distribute any advertising material within 1500 feet of a building in which vehicle registrations or driver licenses are issued to the public.

(4) In municipalities having a population of 50,000 or more, no license will be issued for a commercial driver training school or testing only school if the school's place of business is located within 1500 feet of a facility in which vehicle registrations or driver licenses are issued to the public. When either school is established in a location prior to the origination of a facility located within 1500 feet of the school in which vehicle registrations or driver licenses are issued to the public, the school may continue operation. However, the school's location may not be transferred to another corporation, partnership, or owner, under the same school name or a different school name.

(5) No commercial driver training school or testing only school may change its place of business or location without prior approval from the division.

(6) Each commercial driver training school shall provide classroom space, either in its own building or in any other building approved by the division. The classroom shall have seating for all students, access to sanitary facilities, and appropriate training aids, including blackboards, charts, and projectors. Classroom facilities and buildings shall comply with federal, state, and local building, fire, safety and health codes.

(7) No commercial driver training school or testing only school may use any Department of Public Safety, Driver License Division logos, letterhead, or license recreations as part of their advertising.

R708-2-23. Change of Address, Employees, and Officers.

(1) A commercial driver training school or testing only school shall immediately notify the division in writing when there is any change in residence or business address of owner operator, partner, officer, or employee of the school.

(2) The commercial driver training testing only school shall immediately notify the division in writing when there is any change in the owner or the operator and shall provide the same information that would be required on an original application by the corporation.

(3) Failure to notify the division of any change of address, of the owner or the operator is grounds for revocation of the school license.

(4) The commercial driver training school or testing only school shall immediately notify the division in writing of any employee no longer employed by the school. Failure to notify the division of change is grounds for revocation.

R708-2-24. Change in Ownership.

(1) When any ownership change occurs in the commercial driver training school or testing only school, the school shall immediately notify the division in writing by the new owner and a new application shall be submitted.

(a) An application shall be considered a renewal when one or more of the original licensees remain part owner of the school. When the change in ownership involves a new applicant not named in the application for the last current license or renewal license of the school, the license shall be considered a new application.

(2) The division may permit continuance of the commercial driving training school or testing only school by the current licensee, pending processing of the application made by the new applicant to whom ownership of the school is to be transferred.

(3) Upon issuance of the new license, the prior license shall be immediately surrendered to the division. Refund of any part of the license fee is not permitted.

R708-2-25. Grounds for Revocation, Probation or Refusal to Issue or Renew Instructor License, Operator License, or School License.

(1) Following a hearing, the division may revoke, place on probation, or refuse to renew a license for either an instructor or operator of a commercial driver training school or a testing only school.

(a) The division may also refuse to issue a license for an instructor, operator, commercial driver training school or a testing only school.

(b) A license may be revoked, placed on probation or refused for renewal for any of the following reasons:

(i) failure to comply with any of the provisions of Title 53, Chapter 3, Part 5 Commercial Driver Training Schools Act;

(ii) failure to comply with any of the provisions of Rule 708-2;

(iii) cancellation of surety bond as required in Subsection R708-2-8;

(iv) providing false information in an application or form required by the division;

(v) violation of Subsection R708-2-11 pertaining to moving violations or an accident that results in a suspension or revocation of a driver license;

(vi) failure to permit the division or its representatives to inspect any school classroom, record, or vehicle used in instruction;

(c) conviction of a felony, or conviction of or reasonable grounds to believe an instructor has committed, a crime of moral turpitude;

(d) conviction of a felony, or conviction of or reasonable grounds to believe any licensee has committed a crime of moral turpitude; and

(i) failure to appear for a hearing on any of the above charges.

(2) Any proceeding to revoke, place on probation, or refuse to issue or renew an instructor license, operator license, commercial driver training school license or a testing only school license is an informal adjudicative proceeding under the Utah Administrative Procedures Act, Section 63G-4-202.

(3) Any licensee who has had a license revoked shall not be eligible to reapply for a license until six months have elapsed since the date of the revocation. The applicant shall complete an application for an original license and meet all applicable requirements for an original license. In addition to the other fees provided in Subsection R708-2-5, the licensee shall be required to pay a $75 reinstatement fee for each license revoked to the division upon application for reinstatement.

(a) Upon receipt of a completed application for an instructor license, operator license, commercial driver training

school license or a testing only school, and applicable documentation and fees, the division shall conduct a review process as established by the division director in order to determine eligibility for reinstatement or re-licensure.

(b) Notice of final decision shall be in writing by the division within twenty days of receipt of evidence that all requirements have been met for reinstatement or re-licensure.

(c) When a request for reinstatement is denied, the applicant shall have an opportunity to request a hearing in writing within five days of receipt of the final decision of the division.

R708-2-26. Procedures Governing Informal Adjudicative Proceedings.

(1) The following procedures will govern informal adjudicative proceedings:

(a) the division shall commence an action to revoke, place on probation, or refuse to issue or renew a license by the issuance of notice of agency action. The notice of agency action shall comply with the provisions of Subsection 63G-4-201;

(b) no response is required to the notice of agency action;

(c) an opportunity for a hearing shall be granted on a revocation, probation or refusal to issue or renew a license when the division receives in writing a proper request for a hearing;

(d) the division will send written notice of a hearing to the licensee or applicant at least ten days prior to the date of the hearing;

(e) no discovery, either compulsory or voluntary, shall be permitted prior to the hearing except that all parties shall have access to information in the division's files, and to investigator information and materials not restricted by law;

(f) the division shall designate an individual or panel to conduct the hearing; and

(g) within twenty days after the date of the close of the hearing or after the failure of a party to appear for the hearing, the individual or panel conducting the hearing shall issue a written decision which shall constitute final agency action. The decision shall state the decision, the reason for the decision, notice of right to request reconsideration under Subsection 63G-4-302, notice of right of judicial review under Subsection 63G-4-402, and the time limits for filing an appeal to the appropriate district court.

(2) A commercial driver training school, after being notified of the division's intent to take action, may not transfer any contracts, records, properties, training activities, obligations, or licenses to another party.

(3) If a commercial driver training school license is revoked, placed on probation or refused renewal, the existing classroom, behind-the-wheel, and observation training hours may not be transferred to another school for completion.

(4) If a commercial driver training school license is revoked or refused renewal under the emergency provisions of the school shall not be authorized to conduct business unless otherwise determined at a hearing.

(5) If an instructor license is revoked, placed on probation, or refused renewal under the emergency provisions of Section 63G-4-502, and the school license is valid, the school may continue operation provided that an instructor employed by the school with a valid instructor license ensures operation does not compromise public safety.

(6) If an operator license is revoked, placed on probation, or refused renewal under the emergency provisions of Section 63G-4-502, and the school license is valid, the school may continue operation provided that an operator employed by the school with a valid operator license ensures operation does not compromise public safety.

(7) An instructor license, operator license, commercial driver training school license or a testing only school license may be placed on probation upon approval of the director of the division or designee.

(a) Any licensee placed on probation shall be subject to a period of close supervised probation conditions to be determined by the division. During a period of probation, provided that the terms of the probation agreement are adhered to by the probationer licensee. The instructor license, operator license, commercial driver training school license or a testing only school license shall remain intact and the instructor, operator, or school will be allowed to continue operation.

KEY: driver education, schools, rules and procedures
August 8, 2008 53-3-505
Notice of Continuation January 20, 2017

R708. Public Safety, Driver License.
R708-3. Driver License Point System Administration.
R708-3-1. Purpose.

The purpose of this rule is to establish procedures for the administration of a point system for drivers age 21 and older as mandated by Subsection 53-3-221(4) and a point system for drivers age 20 and younger as mandated by Subsection 53-3-209(2).

R708-3-2. Authority.

This rule is authorized by Subsections 53-3-209(2), 53-3-221(4), and 63G-4-203(1).

R708-3-3. Definitions.

(1) "Defensive driving course" means a course sponsored and conducted by a certified designee of the National Safety Council which allows the division to grant a 50 point reduction from the driving records of drivers who successfully complete the course.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.

(3) "License" means the privilege to drive a motor vehicle.

(4) "Probation" means a division sanction whereby a driver is permitted to drive by complying with certain terms and conditions established by the division.

(5) "Provisional license" means a driving privilege issued by the division to a person younger than 21 years of age.

R708-3-4. Point Assignment.

(1) In compliance with Subsection 53-3-221(4), the division shall determine a number of points to be assigned to each moving traffic violation as a measure of the violation's seriousness.

(2) In compliance with Subsection 53-3-221(4)(c), the driving record of the driver will be assessed 35 points for minimum speeding violations, 55 points for intermediate speeding violations, and 75 points for maximum speeding violations. Since excessive speed has been demonstrated by the National Safety Council and the Department of Public Safety's Utah Traffic Accident Summary to be a leading contributing factor in causing vehicular accidents, the division has determined that the assessing of no points for minimum speeding violations would be detrimental to public safety.

(3) The Driver License Division, Utah Department of Public Safety, shall make available for public review and inspection at the division office, reception desk, 4501 South 2700 West, Salt Lake City, Utah 84130-0560 a listing of the number of points assigned to moving traffic violations and the length of time that the violations remain on the record.

(4) Moving traffic violations which require mandatory sanction by law or rule are assigned 0 points.

R708-3-5. Point Increase or Decrease.

(1) Total points accumulated will be increased or decreased by the following means:

(a) a 10% increase or decrease in points assigned to any moving violation, except speed violations in accordance with Subsection 53-3-221(4)(b);

(b) a 50 point decrease once in a three year period after successfully completing a defensive driving course as defined in this rule;

(c) a 50% point decrease after one year of violation free driving in accordance with Subsection 53-3-221(4)(d); and

(d) a 100% point decrease after two years of violation free driving in accordance with Subsection 53-3-221(4)(d).

(2) The assigned points for any moving traffic violation will be dropped three years after the violation occurred in accordance with Subsection 53-3-221(4)(d).

(3) The point total after a sanction for drivers under age 21 will decrease to 35 points except when the point total is already below 35.

(4) The point total after a sanction for drivers age 21 and older will decrease to 125 points except when the point total is already below 125 in accordance with this rule.

R708-3-6. Point System Thresholds for Drivers Age 21 and Older.

(1) Upon receiving notice of a court conviction of a moving traffic violation, the division will post the violation to the driving record of the individual convicted, along with the points assigned to the violation, as designated in the code violation table.

(2) The division will use the following point thresholds to determine the severity of the sanction to be levied against the driver:

(a) 150 to 199 points: driver is sent a warning letter;

(b) 200 points: driver must appear for a hearing;

(c) 200 to 299 points: driver may be placed on probation or suspended for three months;

(d) 300 to 399 points: driver is suspended for 3 months;

(e) 400 to 599 points: driver is suspended for 6 months; and

(f) 600 or more points: driver is suspended for 1 year.

(3) A driver who is within a designated threshold may be considered for action at a lower threshold if completion of the defensive driving course has lowered the point total to that lower threshold.

(4) The suspension time is doubled, up to a maximum of one year, for a second or subsequent suspension within a three year period.

R708-3-7. Separate Point System for Provisional Licensed Drivers.

(1) In compliance with Subsection 53-3-209(2), a separate point system is established to facilitate behavioral influence upon drivers age 20 and younger. The point thresholds are designed to take remedial action earlier than is provided for drivers who are age 21 and older.

(2) In compliance with Subsection 53-3-209(2), and in conjunction with the consideration of point totals, the division may counsel a driver with regards to the development of safe driving attitudes, habits, and skills.

R708-3-8. Point System Thresholds for Provisional Licensed Drivers.

(1) Upon receiving notice of a court conviction of a moving traffic violation, the division will post the violation to the driving record of the individual convicted, along with the points assigned to the violation, as designated in the code violation table.

(2) The division will use the following point thresholds to determine the severity of the sanction to be levied against the driver:

(a) 35 to 69 points: driver is sent a warning letter;

(b) 70 points: driver must appear for a hearing;

(c) 70 to 139 points: driver may be placed on probation or denied for 30 days;

(d) 140 to 199 points, or violation of probation for the first time in a three year period: driver may be denied for 30 days;

(e) 140 to 199 points for a second time in a three year period or a second probation violation in a three year period: driver may be denied for 60 days;

(f) 140 to 199 points for a third time in a three year period or a third probation violation in a three year period: driver may be suspended for 90 days;

(g) 200 to 249 points: driver is suspended for 60 days;

(h) 250 to 349 points: driver is suspended for 90 days;

(i) 350 to 449 points: driver is suspended for 6 months;

and

(j) 450 or more: driver is suspended for 1 year.

(3) A driver who is within a designated threshold may be considered for action at a lower threshold if completion of the defensive driving course has lowered the point total to that lower threshold.

(4) In accordance with Subsection 53-3-209(2)(b)(iii), the first two sanctions within a three year period will deny a driving privilege unless the point total is 200 or more. A third or additional sanction within a three year period will result in a suspension at the next highest threshold, which doubles in length for each succeeding sanction within the three year period up to a maximum of one year.

R708-3-9. Hearing.

Drivers who are sanctioned under the provisions of this point system rule are entitled to a hearing in accordance with Subsection 53-3-221(5)(a)(i) and R708-35.

KEY: traffic violations, point-system
August 17, 2004 53-3-209(2)
Notice of Continuation Januar 8, 2017 53-3-221(4)

R708. Public Safety, Driver License.
R708-7. Functional Ability in Driving: Guidelines for Physicians.
R708-7-1. Purpose.

The purpose of this rule is to establish standards and guidelines to assist health care professionals in determining who may be impaired, the responsibilities of the health care professionals, and the driver's responsibilities regarding their health as it relates to highway safety.

R708-7-2. Authority.

This rule is authorized by Sections 53-3-224, 53-3-303, 53-3-304, and 49 CFR 391.43.

R708-7-3. Definitions.

(1) "Board" means the Driver License Medical Advisory Board created in Section 53-3-303.

(2) "Division" means the Driver License Division.

(3) "Health care professional" means a physician or surgeon licensed to practice medicine in the state, or when recommended by the Medical Advisory Board, may include other health care professionals licensed to conduct physical examinations in this state.

(4) "Impaired person" means a person who has a mental, emotional, or nonstable physical disability or disease that may impair the person's ability to exercise reasonable and ordinary control at all times over a motor vehicle while driving on the highway. It does not include a person having a nonprogressive or stable physical impairment that is objectively observable and that may be evaluated by a functional driving examination.

R708-7-4. Health and Driving.

(1) Every driver operating a vehicle is individually responsible for their health when driving. Each applicant for a Utah driver license shall be required to answer personal health questions related to driving safety in accordance with recommendations made by the Driver License Medical Advisory Board pursuant to the provisions of Section 53-3-303(8). If the applicant experiences a significant health problem, the applicant is required to take a medical report form furnished by the division to a health care professional who provides all requested information, including a safety assessment level that reflects the applicant's medical condition.

(2) The health care professional will be expected to discuss the applicant's health as it may affect driving abilities and to make special recommendations in unusual circumstances. Based upon a completed safety assessment, the division may deny driving privileges or issue a license with or without limitations in accordance with the standards described in this rule and lists, tables, and charts incorporated herein. Health care professionals have a responsibility to help reduce unsafe highway driving conditions by carefully applying these guidelines and standards, and by counseling with their patients about driving under medical constraints.

R708-7-5. Driver's Responsibilities.

(1) The 1979 Utah State Legislature has defined driver operating responsibilities in Section 53-3-303, related to physical, mental or emotional impairments of drivers. Drivers are:

(a) responsible to refrain from driving if there is uncertainty caused from having a physical, mental or emotional impairment which may affect driving safety;

(b) expected to seek competent medical evaluation and advice about the significance of any impairment that relates to driving vehicles safely; and

(c) responsible for reporting a "physical, mental or emotional impairment which may affect driving safety" to the Driver License Division in a timely manner.

R708-7-6. Health Care Professional's Responsibilities.

(1) Pursuant to Section 53-3-303, health care professionals shall:

(a) make reports to the division respecting impairments which may affect driving safety when requested by their patients. Nevertheless, the final responsibility for issuing a driver license remains with the director of the division;

(b) counsel their patients about how their condition affects safe driving. For example, if medication is prescribed for a patient which may cause changes in alertness or coordination, the health care professional shall advise the patient about how the medication can affect safe driving, and when it would be safe to operate a vehicle. Or, if a patient's visual acuity drops, the patient should similarly be advised, at least until corrective action has been taken to improve vision; and

(c) in accordance with Section 53-3-303(14)(b), be responsible for making available to their patients without reservation, their recommendations and appropriate information related to driving safety and responsibilities, whether defined by published guidelines or not.

R708-7-7. Driver License Medical Advisory Board.

(1) The Driver License Medical Advisory Board, as per Section 53-3-303, shall advise the director of the division and recommend written functional ability and safety assessment guidelines and standards for determining the physical, mental and emotional capabilities of applicants for licenses, appropriate to various driving abilities.

(2) In case of uncertainty of interpretation of these guidelines and standards, or in special circumstances, applicants may request a review of any division decision by a panel of board members. All of the actions of the director and board are subject to judicial review.

(3) In accordance with Section 53-3-303(8),the board shall administer the functional ability and safety assessment guidelines, which are intended to minimize such conflicts as the individual's desire to drive and the community's desire for highway safety.

R708-7-8. Persons Authorized to Complete Functional Ability Evaluation Medical Report Form.

(1) Physicians and surgeons licensed to practice medicine may complete the entire Functional Ability Evaluation Medical Report form.

(2) Nurse practitioners and physician assistants, and in accordance with 49 CFR 391.43, physician assistants, advanced practice nurses, doctors of chiropractic and other health care professionals, may perform physical examinations and report their findings on the Functional Ability Evaluation Medical Report form provided that:

(a) they are licensed by the state as health care professionals;

(b) the physical examination does not require advanced or complex diagnosis or treatment; and

(c) in the event that advanced or complex medical diagnostic analysis is required, the licensed health care professional, consistent with sound medical practices, will be expected to promptly refer the patient to the appropriate physician, surgeon or doctor of osteopathy for further evaluation and for completion of the functional ability evaluations certifications report in those categories.

R708-7-9. Safety Assessment Level Categories.

Functional ability of a driver to operate a vehicle safely may be affected by a wide range of physical, mental or emotional impairments. To simplify reporting and to make possible a comparison of relative risks and limitations, the Medical Advisory Board has adopted physical, emotional and behavioral safety assessment levels as defined in 12 separate

categories, with multiple levels under each category.

R708-7-10. Use of the Safety Assessment Level.

(1) Health care professionals who evaluate their patients' health status for purposes of the patient obtaining a Utah driver license, shall report safety assessment levels on forms provided by the division.

(2) In assessing patient health and completing these report forms, health care professionals shall apply the standards and related information contained in the following lists, charts, and tables, which standards and guidelines are referred to in a booklet entitled, "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals." Specific categories are:

(a) "Category A" - diabetes and other metabolic conditions; narrative listing and table;

(b) "Category B" - cardiovascular; narrative listing and table;

(c) "Category C" - pulmonary; narrative listing and table;

(d) "Category D" - neurologic; narrative listing and table;

(e) "Category E" - epilepsy and other episodic conditions; narrative listing and table;

(f) "Category F" - learning, memory and communications; narrative listing and table;

(g) "Category G" - psychiatric or emotional conditions; narrative listing and table;

(h) "Category H" - alcohol and other drugs; narrative listing and table;

(i) "Category I" - visual acuity; narrative listing and table;

(j) "Category J" - musculoskeletal abnormality or chronic medical debility; narrative listing and table;

(k) "Category K" - alertness or sleep disorders; narrative listing and table; and

(L) "Category L" - hearing and balance; narrative listing and table.

(3) Copies of these guidelines are printed in a booklet and distributed by the division in addition to being published on the Driver License Division webpage. These booklets may be obtained at no cost for health care professionals or $5 per booklet for all other individuals. Copies may be obtained in person or by written request to the Driver License Division Medical Section at P.O. Box 144501, Salt Lake City, Utah 84114-4501.

(4) Report forms completed by a health care professional and received by the division are to be used as a screening tool in assessing an individual's ability to safely operate a motor vehicle.

(a) Some safety assessment levels as identified in the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", may result in the division requesting an individual to complete a driver review, which may include a driving skills test in order to demonstrate the ability to safely operate a motor vehicle before determining whether the individual will maintain the privilege to drive. In some cases when a privilege to drive is granted, driving restrictions may be required in order to ensure public safety.

(b) A health care professional may also request that the division evaluate an individual's driving skill level at the health care professional's discretion.

(5) The division shall notify an individual that their privilege to drive is denied upon receipt of the following:

(a) a medical report that is completed in the categories A, B, C, D, E, F, G, H, J, K, or L, for which the driver is assessed at a level "8" in accordance with the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", or other documentation which indicates that the health care professional recommends that the individual does not drive; or

(b) a medical report that is completed in the category I for which the driver is assessed at a level "10" in accordance with the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", or other documentation which indicates that the health care professional recommends that the individual does not drive.

(6) Upon receipt of a notice of denial of the privilege to drive, an individual may request a review of the division's decision by a panel of board members. All of the actions of the director and board are subject to judicial review.

KEY: administrative procedures, health care professionals, physicians

March 10, 2015	**53-3-224**
Notice of Continuation January 8, 2017	**53-3-303**
	53-3-304
	49 CFR 391.43

R708. Public Safety, Driver License.
R708-8. Review Process: Driver License Medical Section.
R708-8-1. Step One.

When competent evidence is received by the Department that a driver license applicant or licensee has physical, mental or emotional conditions which may impair his ability to safely operate a motor vehicle, the department may act to restrict or deny the applicant or licensee's driving privilege by applying the Driver License Medical Advisory Board's Physician's Guidelines.

The decision to limit or deny privileges may also be based, in part, upon informal consultation between the department and one or more members of the Medical Advisory Board.

R708-8-2. Step Two.

53-3-303 requires the aggrieved applicant or licensee to notify this department of their desire for a medical review of the above action in writing within ten (10) days after the receipt of notice of such action.

R708-8-3. Step Three.

The Department (Driver License - Medical Section) upon receipt of a written request for review, will contact the Driver License Medical Advisory Board chairperson for his recommendation regarding which board members should be contacted to constitute a panel. These members will then be contacted by the department and will be given a time, date and location within sixty (60) days after receipt of the request at which to meet in order to review the medical evidence. The Driver License Division Director or his designate shall also attend the review meeting. Unless otherwise agreed upon, such meetings will be held after regular office hours. The applicant or licensee will be notified by the department of the date on which their case will be reviewed and may submit any type of written, photographic or otherwise documented medical evidence in their behalf to the department for the panel's consideration. The applicant may be requested by the Driver License Medical Advisory Board to appear in person during the review in order to answer questions regarding their medical condition.

The panel shall review the matters and make written findings and conclusions pursuant to which the department shall affirm or modify its previous action. It shall be the policy of the department to adhere as closely as possible to the panel's recommendations regarding licensure of the applicant. The applicant or licensee shall be notified in writing at their last known address of the Department's decision to uphold or modify its original action as soon as possible following the review.

R708-8-4. Step Four.

If new, relevant and heretofore undisclosed medical evidence which is germane to the applicant or licensee's case should develop following the panel's findings and conclusions, such evidence may be presented to the department and the applicant or licensee's case will be reviewed by the department in light of this evidence.

R708-8-5. Step Five.

If the applicant is further aggrieved by the department's decision following the above review process, they may appeal to the courts for judicial review as provided for by Section 53-3-224.

KEY: administrative procedure, legislative procedure
1992 53-3-303
Notice of Continuation January 8, 2017 53-3-224

R708. Public Safety, Driver License.
R708-14. Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs.
R708-14-1. Purpose.

The purpose of this rule is to establish procedures to be used by the Utah Driver License Division for alcohol/drug adjudicative proceedings.

R708-14-2. Authority.

This rule is authorized by Section 53-3-104 and Subsection 63G-4-203(1).

R708-14-3. Definitions.

(1) "Adjudicative proceeding" means any meeting, conference, session or hearing, in person or otherwise, between a person and a presiding officer or designee of the division, that is intended to resolve a dispute.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.

(3) "Division record" means the entire division file, including written reports received or generated by the division. It also includes, but is not limited to, minutes, written comments, presiding officer's written statements and summaries, testimony, evidence, findings of fact, conclusions of law, recommendations, and orders.

(4) "Hearing" means an alcohol/drug adjudicative proceeding where evidence is considered to determine an issue of fact and to adjudicate a legal right or privilege.

(5) "Presiding officer" means a division employee with authority to conduct alcohol/drug adjudicative proceedings.

(6) "Recording" means documenting, by electronic or other means, the testimony or information presented at an alcohol/drug adjudicative proceeding.

R708-14-4. Designations.

(1) In compliance with Section 63G-4-202, all division alcohol/drug adjudicative proceedings are designated as informal proceedings, unless converted to formal proceedings by a presiding officer or division supervisor.

(2) An informal proceeding may be converted to a formal proceeding only if approved by a division supervisor and only if the conversion will promote efficiency, public safety, and not unreasonably increase cost.

(3) The driver may represent him/herself or be represented by a State Licensed attorney in the adjudicative proceeding.

R708-14-5. Authority for Conducting Adjudicative Proceedings.

Alcohol/drug adjudicative proceedings will be conducted in accordance with Sections 41-6a-521, 53-3-223, 53-3-231, 53-3-418, 63G-4-203, and this rule.

R708-14-6. Commencement of Adjudicative Proceedings.

(1) In accordance with Subsection 63G-4-201, alcohol/drug adjudicative proceedings may be commenced by:

(a) a notice of division action, if the proceedings are commenced by the division; or

(b) a request for division action, if the proceedings are commenced by a person other than the division.

(2) A notice of division action and request for division action shall include the information set forth in Subsections 63G-4-201(2)(a) and (3)(a) respectively. In addition, a request for division action shall include the petitioner's full name, date of birth, and the date of arrest or occurrence which prompted the request for division action. A request for division action that is not made timely, in accordance with Subsections 53-3-223(6)(a), 53-3-231(7)(a)(ii), and 53-3-418(9)(b), will not be granted except for good cause as determined by the division.

R708-14-7. Alcohol/Drug Adjudicative Proceedings.

The alcohol/drug adjudicative proceedings deal with the following types of hearings:

(a) driving under the influence of alcohol/drugs (per-se), Section 53-3-223;

(b) implied consent (refusal), Section 41-6a-520;

(c) measurable metabolite in body, Section 41-6a-517;

(d) consumption by a minor (not a drop), Section 53-3-231; and

(e) CDL (.04), Section 53-3-418.

R708-14-8. Hearing Procedures.

(1) Time and place. Alcohol/drug adjudicative proceedings will be held in the county of arrest or a county which is adjacent to the county in which the offense occurred, at a time and place designated by the division, or agreed upon by the parties.

(2) Notice. Notice shall be given as provided in Subsection 53-3-216(4) unless otherwise agreed upon by the parties. Notice shall be given on a form approved by the division and is deemed to be signed by the presiding officer. The notice need only inform the parties as to the date, time, place, and basic purpose of the proceeding. The parties are deemed to have knowledge of the law.

(3) Default. If the driver fails to respond timely to a division request or notice, a default may be entered in accordance with Section 63G-4-209.

(4) Evidence. The parties and witnesses may testify under oath, present evidence, and comment on pertinent issues. The presiding officer may exclude irrelevant, repetitious, immaterial, or privileged information or evidence. The presiding officer may consider hearsay evidence and receive documentary evidence, including copies or excerpts.

(5) Information. The driver shall have access to information in the division file to the extent permitted by law.

(6) Subpoenas. Discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence. Subpoenas may be issued by the division at the request of the driver if the costs of the subpoenas are paid by the driver and will not delay the proceeding.

(7) Administrative notice. The presiding officer has discretion to take administrative notice of records, procedures, rules, policies, technical scientific facts within the presiding officer's specialized knowledge or experience, or of any other facts that could be judicially noticed.

(8) Presiding officer. The presiding officer may:

(a) administer oaths;

(b) issue subpoenas;

(c) conduct prehearing conferences by telephone or in person to clarify issues, dispose of procedural questions, and expedite the hearing;

(d) tape record or take notes of the hearing at his/her discretion;

(e) take appropriate measures to preserve the integrity of the hearing; and

(f) conduct hearings in accordance with division policy III-A-3, III-A-4, and III-A-5.

R708-14-9. Findings, Conclusions, Recommendations and Orders.

(1) Within a reasonable period of time after the close of the hearing, the presiding officer will issue a written decision that may include findings of fact, conclusions of law, and a recommendation.

(2) Statements reflecting findings of fact, conclusions of law, and recommendation may be written on forms that utilize a system of check boxes and fill in blanks. The completed form will be transmitted to the presiding officer's supervisor as soon as possible for the preparation of an order that complies with

Subsection 63G-4-203(1)(i).

(3) As provided in Subsection 53-3-216(4), the order will be mailed to the last known address of the driver.

(4) The order shall advise the driver of his/her right to seek a copy of written findings, conclusions, and recommendation of the presiding officer, and these will be made available to the driver only upon written request.

R708-14-10. Reconsideration.

In accordance with Section 63G-4-302 a driver may file a request for reconsideration of the order within 20 days after receiving it. If the division does not issue an amended order within 20 days after receiving the request for reconsideration, the request for reconsideration shall be considered denied, and the driver may seek judicial review in accordance with Section 63G-4-402.

KEY: adjudicative proceedings
May 26, 2015 53-3-104
Notice of Continuation January 8, 2017 63G-4-203(1)

R708. Public Safety, Driver License.
R708-21. Third-Party Testing.
R708-21-1. Authority.

This rule is authorized by Section 53-3-104.

R708-21-2. Purpose.

The purpose of this rule is to establish standards and procedures for Third-party Testers and Third-party Examiners who enter into an agreement with the State, to administer skills tests to commercial drivers.

R708-21-3. Definitions.

(1) Definitions used in this rule are found in Section 53-3-102.

(2) In addition:

(a) "act involving moral turpitude" means conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another property;

(b) "designated representative" means a person identified by an organization, who is an officer, owner, partner or employee of the organization and who is authorized by the organization to comply with Third-party Testing Program requirements;

(c) "established business" means any company that has been issued a license by a state, county or city licensing agency to conduct business;

(d) "probation" means action taken by the department, which includes a period of close supervision as determined by the division;

(e) "revocation" means the permanent removal of certification of a Third-party Tester or Third-party Examiner;

(f) "state" means the State of Utah;

(g) "third-party examiner" means a person who has completed, passed and maintains the required training to administer the skills tests to commercial drivers; and

(h) "third-party tester" means a person, an agency of this state, an employer, a private driver training facility or other private institution, or a department, agency or entity of local government with whom the state has an agreement to administer skills tests to commercial drivers.

R708-21-4. Requirements for Application, Certification and Renewal of Certification for a Third-party Tester.

(1) Application for an original or renewal Third-party Tester certification shall be made on a form furnished by the division, and shall include:

(a) name of Third-party Tester;

(b) address of Third-party Tester;

(c) number of years Third-party Tester has been in business;

(d) names of all Third-party Examiners;

(e) addresses of all testing sites;

(f) name of the designated representative; and

(g) copy of business license.

(2) Upon receipt of the application, fingerprint card and required fees, the division shall schedule an appointment with the Third-party Tester to determine eligibility, establish test routes, schedule instruction and provide forms.

(3) A written agreement shall be made with the state to conduct skills test as required by Federal regulations established in 49 CFR 383.75. The agreement shall contain the following provisions:

(a) allow the Federal Motor Carrier Safety Administration (FMCSA) or its representative, and/or the division to conduct random examinations, inspections and audits without prior notice;

(b) allow the division to conduct on-site inspections annually or when deemed necessary by the division;

(c) require all Third-party Examiners receive training approved by the division which requires them to conduct skills tests in compliance with the FMCSA minimum standards; and

(d) require at least one of the following on an annual basis:

(i) a division representative take the tests actually administered by the Third-party Examiner as if the division representative were a test applicant;

(ii) the division test a sample of drivers who were examined by the Third-party Examiner to compare pass/fail results; or

(iii) the division co-score along with the Third-party Examiner during CDL skills test to compare pass/fail.

(4) The Third-Party tester shall:

(a) have an established business for a minimum of two years, or employ a Third-party Examiner that has been certified the previous two years under R708-21-5;

(b) maintain a current business license required by the municipality or county;

(c) have at least one qualified and approved Third-party Examiner;

(d) require that Third-party Examiners:

(i) administer at least ten CDL skills tests in the year preceding the renewal of the Third-party Tester application; or

(ii) be observed by the division representative administering at least one CDL skills test in the proper manner;

(e) name a designated representative(s) that will sign signature cards for new employees and withdraw the authority of employees that are no longer certified to test for the company;

(f) not be permitted to engage the service of an employee of the division as an examiner, agent, or employee; and

(g) submit a fingerprint card and a check or money order to the division, made payable to the Utah Bureau of Criminal Identification, to cover the cost associated with a criminal history background check and FBI check.

(5) Certification shall be valid for a period of 12 months. No later than one month prior to expiration of certification, the Third-party Tester shall submit a renewal application to the division.

R708-21-5. Requirements for Application, Certification and Renewal of Certification for a Third-party Examiner.

(1) An application for an original or renewal Third-party Examiner certification shall be made on a form furnished by the division, and shall include the following:

(a) name of Third-party Tester;

(b) address of Third-party Tester;

(c) name of Third-party Examiner;

(d) residential address of Third-party Examiner;

(e) telephone number and email address of Third-party Examiner; and

(f) signature and date of Third-party Examiner.

(2) All Third-party Examiners shall be sponsored by a Third-party Tester, who shall be responsible for all tests administered by the Third-party Examiner.

(3) An applicant for Third-party Examiner shall comply with the following requirements:

(a) have and maintain a valid driver's license with no suspensions, revocations, cancellations or disqualifications within one year prior to application;

(b) have at least three years driving experience;

(c) submit a fingerprint card and a check or money order to the division, made payable to the Utah Bureau of Criminal Identification, to cover the cost associated with a criminal history background check and FBI check;

(d) have the physical strength and agility to physically enter and exit commercial vehicles unassisted;

(e) complete the approved training by the division and pass the final examination with a minimum score of 80%. Third-party Examiners need to be aware that any training they receive from private or other organizations may require a training fee;

(f) schedule a time, within one year of training with the division representative, to demonstrate his/her ability to perform the skills tests according to 49 CFR 383.75 (g) and 49 CFR 383.75 (h), in an actual test setting. Upon approval from the division representative, the examiner may begin testing. Failure to comply with this portion of this certification process will result in the examiner having to complete the approved training as described in R708-21-5 (3)(e); and

(g) upon completion of training, Third-party Examiners shall be issued a certificate of completion. The division will file and maintain a copy of the certificate of completion in the Third-party Tester file.

(4) All authorized Third-party Examiners shall be required to sign an agreement verifying that they have read and understand the required rules and training materials.

(5) Upon application for recertification a Third-party Examiner shall meet the requirements outlined in Subsections R708-21-5(1) through R708-21-5(4) in addition to the following:

(a) administer at least ten CDL skills tests to different applicants in the year preceding the renewal of the Third-party Tester application; or

(b) be observed by the division representative administering at least one CDL skills tests in accordance with 49 CRF 383.75(g) and 49 CFR 383.75(h).

R708-21-6. Requirements for Designated Representative.

(1) A designated representative is responsible for overseeing the Third-party Tester and Examiners. The designated representative shall be the liaison between division representatives and Third-party Examiners.

(2) A designated representative shall:

(a) maintain personnel files for all Third-party Examiners assigned to their company;

(b) notify the division in writing within 10 calendar days of any change to a Third-party Examiner driving status;

(c) maintain and update all Third-party Examiners signature cards;

(d) notify the division in writing within 30 calendar days of a change to a Third-party Tester or Examiners address;

(e) make application for renewal of a Third-party Tester certificate at least one month prior to expiration date;

(f) maintain security of all CDL score sheets and personal data noted on the CDL score sheets;

(g) ensure all CDL test score sheets have been destroyed after 3 years.

R708-21-7. Skills Test Administration.

(1) Skills tests shall be conducted strictly in accordance with the provisions of these requirements and with current test instructions provided by the division 49 CFR 383.75, and the AAMVA training manual.

(a) Such instructions include information regarding:

(i) skills test content;

(ii) route selection/revision;

(iii) test forms;

(iv) examiner procedures; and

(v) administrative procedures.

(2) Tests shall be conducted:

(a) on test routes approved by the division;

(b) in a vehicle that is representative of the class and type of vehicle for which the CDL applicant seeks to be licensed, and for which the Third-party Examiner is qualified to test; and

(c) by using division approved content, forms and scoring procedures.

(3) Third-party Examiners shall test and certify only those CDL applicants who hold a valid Commercial Driver Instruction Permit and shall ensure adherence to the class, endorsements, restrictions and expiration dates listed on the permit.

(4) All Third-party Testers and Third-party Examiners shall schedule the skills tests on the division's web application at least 48 hours prior to administering the CDL Skills test.

R708-21-8. Processing CDL Skills Test.

(1) The division shall provide training and allow access to the divisions web service application used for scheduling skills tests and recording the results of the tests to:

(a) a certified Third-party Examiner; or

(b) a representative of the Third-party Tester that has met the requirements of R708-21-5(3)(c) and the division has reviewed and approved the results of the fingerprint and FBI background checks.

(2) The division shall supply an approved CDL skills test score sheet to authorized Third-party Testers for use when administering skills tests. The score sheet shall be filled out correctly and signed by both the Third-party Examiner and driver,

(a) Third-party Testers shall maintain all skill test score sheets for a period of three years after which they must be immediately destroyed by means of incineration or shred.

(b) Third-party Testers are responsible to ensure the security of all CDL score sheets and personal data collected on the CDL score sheets and the applicant.

(3) The score sheet shall include the following information:

(a) applicant's name and phone number;

(b) applicant's Utah Driver License number;

(c) description of the vehicle in which test was taken, including optional equipment;

(d) Gross Vehicle Weight Rating (GVWR);

(e) vehicle and trailer license plate numbers;

(f) class of license, restriction and/or endorsement tested for;

(g) start time, end time, and date test was administered;

(h) authorized Third-party Examiner name and assigned number;

(i) applicant's signature and date; and

(j) authorized Third-party Examiner's signature and date.

(4) The Third-party Examiner shall document all skills test results on the score sheet.

(5) The Third-party Examiner shall provide the completed skills test score sheet to the driver in a sealed envelope.

(6) The Third-party Examiner or Third-party Tester shall not withhold a passed skills test score sheet from an applicant that has successfully met the testing requirements.

(7) The Third-party Examiner shall enter the skills test results on the driver's record through the division web application within 48 hours of the test.

(8) Test results are only acceptable if testing was completed within the previous six months.

(9) The division shall accept the score sheet as proof the driver has completed one or more skills tests.

(10) As a result of the driver not completing or passing the skills test within six months of the original failed or incomplete test, the Third-party Examiner shall send the score sheet directly to the division representative.

R708-21-9. Inspection and Audit Process.

(1) During inspections the representative(s) designated by the Third-party Tester shall cooperate with the division or federal representative with respect to on-site inspections.

(2) On-site inspections shall be conducted to verify compliance with FMCSA guidelines and R708-21.

(3) The Third-party Tester shall maintain accurate driver

testing records and must be able to furnish them upon request.

(4) Check rides may be made by any designated division representative to verify compliance with the state and federal minimum testing standards and may consist of:

(a) a division employee taking the skills test as administered by the Third-party Tester as if such employee was a test applicant;

(b) the division administering the skills tests to a sample of drivers who were previously examined by the Third-party Testers to determine if the check ride results are consistent with the Third-party Tester results; and

(c) the division co-score along with the Third-party Examiner during CDL skills test to compare pass/fail.

(5) A division representative shall prepare a written report of all inspections, check rides and audits. A copy of these reports shall be maintained by the division for ten years.

(6) The division shall send a renewal letter to the Third-party Tester indicating any problems, concerns or violations found during the audit with an action plan detailing how to correct the items identified.

R708-21-10. Notification of Accident.

If any Third-party Examiner is involved in an accident during the course of administering a skills test, the Examiner shall notify the division in writing within five days of the accident. The Third-party Examiner shall submit to the division a copy of the investigating law enforcement officer's accident report as soon as it is available.

R708-21-11. Advertising.

(1) No advertisement shall indicate in any way that a program can issue or guarantee the issuance of a CDL, or imply that the program can in any way influence the division in the issuance of a CDL, or imply that preferential or advantageous treatment from the division can be obtained.

(2) No Third-party Tester or Third-party Examiner shall solicit business directly or indirectly, or display or distribute any advertising material within 1,500 feet of a building in which driver licenses are issued to the public.

(3) No Third-party Tester or Third-party Examiner shall use any department or division logos, letterhead, or license recreations as part of their advertising.

R708-21-12. Grounds for Revocation, Probation or Denial to Issue or Renew Third-party Tester or Third-party Examiner Certification.

(1) A Third-party Tester or Third-party Examiner may be revoked, denied or placed on probation for any of the following reasons:

(a) failure to comply with any of the provisions of 49 CFR 383.75;

(b) failure to comply with any of the provisions of Section 53-3-407;

(c) failure to comply with any of the provisions of R708-21;

(d) falsification of any records or other required information relating to the Third-party Tester program;

(e) commission of any act that compromises the integrity of the Third-party Tester Program Commercial Motor Vehicle Safety Act, 1986;

(f) failure to permit and cooperate with the division or federal representative to inspect the testing routes, testing sites or score sheets issued to the Third-party Tester; and

(g) conviction of any crime involving dishonesty, deception, theft, or an act involving moral turpitude by a Third-party Tester or Third-party Examiner.

(2) In determining whether revocation, denial or probation of a certification is appropriate, the division shall consider the third-party tester or third-party examiners involvement and severity of the violation(s).

(3) If a Third-party Examiner certificate is revoked under the emergency provisions of Section 63G-4-502, and the Third-party Tester certificate is valid, the Third-party Tester may continue conducting CDL driving skills tests provided:

(a) the Third-party Examiner is no longer employed by the Third-party Tester;

(b) a Third-party Examiner with a valid certificate is employed by the Third-party Tester;

(c) testing shall not compromise public safety; and

(d) the Third-party Tester is found to not knowingly have allowed a Third-party Examiner to conduct tests that violate state or federal laws, or any provision of R708-21.

(4) Following cancellation of the Third-party Tester certification, the Third-party Tester shall promptly return all CDL skills test documents. Documentation includes at a minimum:

(a) CDL Examiner manual;

(b) used and blank score sheets; and

(c) Third-party Examiner certificates.

R708-21-13. Adjudicative Proceedings.

(1) All adjudicative proceedings shall be conducted informally as provided in Section 63G-4-202.

(2) The division shall initiate agency action against a Third-party Tester or Third-party Examiner with a notice of agency action in accordance with Section 63G-4-201.

(3)(a) A Third-party Tester or Third-party Examiner 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 ten calendar days from the date of the notice of agency action.

(b) If a timely request for hearing is filed, the agency action shall be stayed until the division's hearing officer issues a written decision.

(c) A hearing shall be held before the division's hearing officer within 30 calendar days of the day that the division receives the written request for hearing, unless agreed to by the parties.

(d) At the hearing, Third-party Tester or Third-party Examiner shall have an opportunity to demonstrate why the division should not take agency action.

(e) The hearing officer shall issue a written decision within ten business days of the hearing in accordance with Section 63G-4-203.

(4) The written decision of the hearing officer shall constitute final agency action and is subject to judicial review in accordance with Section 63G-4-402.

KEY: motor vehicle safety, inspections

August 8, 2013	**53-3-104**
Notice of Continuation January 20, 2017	**53-3-407.1**
	49 CFR 383.75

R708. Public Safety, Driver License.
R708-27. Certification of Driver Education Teachers in the Public Schools to Administer Knowledge and Driving Skills Tests.
R708-27-1. Authority and Purpose.

This rule establishes standards and procedures to certify teachers of driver education classes in the public schools to administer knowledge and driving skills tests as required by Section 53A-13-208.

R708-27-2. Definitions.

"Cancellation" means the certification is void.

"Certification" means the process by which public education teachers of driver education are certified by the Driver License Division to administer knowledge and driving skills tests.

"Division" means the Driver License Division of the Utah Department of Public Safety.

"Suspension" means that a teacher's certification is currently void but may be reinstated whenever the teacher follows a division-approved plan and complies with reinstatement procedures.

"Teacher" means a teacher of driver education classes in the public schools of the State of Utah.

"Test" means a division approved knowledge test or driving skills test as approved by the division.

"USOE" means the Utah State Office of Education.

R708-27-3. Standards and Procedures.

(1) A teacher shall become certified by making application and by meeting the requirements of this rule. Application shall be made on a form furnished by the division and shall include the following information:

(a) The name of the teacher who is applying for certification;

(b) The addresses of locations where the teacher will be conducting driver education tests; and

(c) A verification that the teacher has completed division approved training for knowledge and driving skills testing.

(2) The division will offer training to teachers concerning minimum standards which must be met in the administration and scoring of tests.

(3) The division may authorize and train personnel within the public schools to provide the above training to teachers desiring to be certified to administer driver license knowledge and driving skills tests.

(4) When testing students for driver licenses, certified teachers shall use only such driver training tests which are developed and used as a standard by the division for first time driver license applicants.

(5) Knowledge test questions shall be kept in a secure place and shall be accessible only to school officials and to the division. Copies of the tests shall not be retained by students.

(6) The driving skills test shall be conducted on streets, highways and off-road courses only. No simulator testing shall be substituted as part of the final test.

(7) The test results will be valid for driver licensing purposes only if administered in conjunction with approved public driver education courses and by teachers meeting the requirements of these rules.

(8) Records of all student test results shall be retained by the school for a four year period. The records shall be accessible to the division upon request during normal school hours.

(9) Investigations and resolution of complaints relating to testing under this program shall be the responsibility of the USOE.

(10) The USOE shall provide annually, on or before September 30, to the division, a list of all active certified driver education teachers.

R708-27-4. Submittal of Evidence of Student Test Completion.

(1) The following procedures shall be followed by the teacher and the student in submitting evidence of satisfactory completion of knowledge and driving skills testing.

(2) As evidence of satisfactory completion of knowledge testing, the school shall furnish a certificate of knowledge test completion to the student. The certificate shall be a form approved by the division and shall contain:

(a) the student's full legal name;

(b) the student's date of birth;

(c) the name of the school district;

(d) the name of the school;

(e) the school ID number;

(f) results of the knowledge test;

(g) the date the test was passed; and

(h) the signature of the certified teacher who administered the test.

(3) To apply for a Class D learner permit, a student must successfully pass the written knowledge test given by the division, or submit the certificate of knowledge test completion given him by the school.

(4) As evidence of satisfactory completion of driving skills testing and course completion, the school shall furnish a certificate to the student. The certificate shall be a form approved by the division and shall contain the following:

(a) the student's name as it appears on the Utah Lerner permit;

(b) the student date of birth;

(c) the student's date of birth,

(d) original issue date of completion certificate;

(e) results of the driving skills test;

(f) the signature of the certified teacher who administered the test;

(g) the date the test was completed;

(h) the date the driver education course was completed;

(i) the school ID number;

(j) the name of the school district; and

(k) the name of the school.

(5) To apply for a Class D driver license, a student may submit the completed certificate of testing and the certificate of completion of driver training course, as issued to him/her by the school, to a division testing station.

(6) When a student applies for a Class D driver license, the Division may waive it's normally administered knowledge and driving skills tests for students presenting valid certificates of testing.

R708-27-5. Refusal to Certify, Grounds for Cancellation and Suspension of Certification.

(1) The division may refuse to certify teacher applicants who do not meet the standards for training or who submit an application that contains false or incomplete information.

(2) The certification of a teacher shall be effective until cancelled or suspended by the division. The USOE may initiate suspension or cancellation of a certification by providing the division with a written request.

(3) Certification once granted may be cancelled or suspended for non-compliance with these rules.

(4) When the division determines that a need exists to cancel or suspend a teacher's certification, it shall determine an appropriate course of action from the following options:

(a) suspension, pending a plan for remediation leading to reinstatement, or

(b) cancellation of certification.

(5) Reinstatement following cancellation of certification shall consist of completing an approved training plan following

cancellation of certification and making application for a new certification.

(6) Certification shall be cancelled when teachers no longer are employed as licensed public school teachers. Teachers who discontinue employment with the USOE and then return to teach driver education must make a new application with the division for a new certification and complete approved training following cancellation of certification.

KEY: driver education, teacher certification
August 8, 2006 53A-13-208
Notice of Continuation January 20, 2017

R708. Public Safety, Driver License.
R708-34. Medical Waivers for Intrastate Commercial Driving Privileges.
R708-34-1. Purpose.

A person who desires to obtain an interstate commercial driver license must meet the minimum federal fitness standards dealing with physical, mental, and emotional health set forth in Part 391 of the Federal Motor Carrier Safety Regulations. As authorized by Section 53-3-303.5, compliance with those standards can be waived for a person who (a) desires to obtain commercial driving privileges for intrastate driving only, and (b) meets minimum state fitness standards. This rule sets forth the procedure whereby a person may apply for a waiver, and also for the Driver License Division to respond to waiver requests.

R708-34-2. Authority.

This rule is authorized by Subsection 63G-3-201(2) and Section 53-3-303.5.

R708-34-3. Definitions.

(1) "Board" means the Driver License Medical Advisory Board.

(2) "Commercial driving privileges" means the privilege given to any licensed operator of a motor vehicle who must be in compliance with Federal Fitness Standards for the purpose of transporting commerce in vehicles with a gross vehicle weight of at least 10,000 to 26,000 pounds or over, with or without a commercial driver license.

(3) "Department" means the Utah Department of Public Safety.

(4) "Division" means the Driver License Division.

(5) "Fitness standards" means standards set forth by the board for determining the physical, mental and emotional capabilities appropriate for issuance of intrastate commercial driver licenses.

(6) "Waiver" means approval granted by the division allowing a driver to drive commercial vehicles intrastate even though the driver does not meet the minimum federal fitness standards to drive commercial vehicles interstate.

(7) "Medical Waiver Card" means a card issued by the Driver License Division to verify the driver has met minimum state fitness standards to qualify for intrastate commercial driving privileges.

R708-34-4. Requesting a Waiver.

Drivers desiring an intrastate commercial driving privilege waiver shall:

(a) request a waiver application from the Driver License Division, Medical Waiver Program Coordinator, P.O. Box 144501, Salt Lake City, UT 84114-4501;

(b) submit to the division for approval a waiver application with a current Functional Ability Evaluation Medical Certificate Report and Certificate of Visual Examination, as required, and a non-refundable check or money order payable to the Utah Department of Public Safety for the waiver processing fee;

(c) take a letter received from the division granting the waiver to any commercial driver license office and apply for an intrastate commercial driving privilege with appropriate endorsements and/or restrictions; and

(d) pay applicable waiver fees, and when necessary, take appropriate written and skills tests to obtain the desired driving privilege.

R708-34-5. Obligation of Drivers Possessing Waivers.

Drivers possessing waivers must comply with division instructions requesting periodic updated medical information including submission of a Functional Ability Evaluation Medical Report, a Certificate of Visual Examination, and a non-refundable check or money order payable to the Department. Non-compliance with division instructions may result in the denial of commercial driving privileges.

R708-34-6. Driver License Medical Advisory Board Responsibilities.

The board shall:

(a) establish fitness standards for issuing intrastate commercial driver licenses under Title 53, Chapter 3, Part 4, Uniform Commercial Driver License Act; and

(b) review waiver applications when necessary and make recommendations to the division director.

R708-34-7. Driver License Division Responsibilities.

(1) The division shall provide information and guidance to waiver applicants and shall process all waiver applications.

(2) The division shall coordinate with and provide information to the board concerning waiver applications and shall issue a letter approving or disapproving a waiver after consideration of the board's recommendation.

(3) The division shall issue a medical waiver card which the applicant must carry while driving intrastate.

R708-34-8. Adjudicative Proceedings.

(1) In accordance with Subsection 63G-4-202(1) all adjudicative proceedings herein shall be conducted informally.

(2) A driver whose waiver application is denied, or whose waiver application is granted with restrictions that are unacceptable to the driver, may make a request for administrative review in accordance with Subsection 53-3-303(10) and for judicial review in accordance with Subsection 53-3-303(11).

KEY: intrastate driver license waivers
December 4, 2001 63G-3-201(2)
Notice of Continuation January 8, 2017 53-3-303.5

R708. Public Safety, Driver License.
R708-35. Adjudicative Proceedings For Driver License Offenses Not Involving Alcohol or Drug Actions.
R708-35-1. Purpose.

The purpose of this rule is to establish procedures to be used by the Utah Driver License Division for non-alcohol/drug adjudicative proceedings.

R708-35-2. Authority.

This rule is authorized by Section 53-3-104 and Subsection 63G-4-203(1).

R708-35-3. Definitions.

(1) "Adjudicative proceeding" means any meeting, conference, session or hearing, in person or otherwise, between a person and a presiding officer or designee of the division, that is intended to resolve a dispute.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.

(3) "Division record" means the entire division file, including written reports received or generated by the division. It also includes, but is not limited to, minutes, written comments, presiding officer's written statements and summaries, testimony, evidence, findings of fact, conclusions of law, recommendations, and orders.

(4) "Hearing" means a non-alcohol/drug adjudicative proceeding where evidence is considered to determine an issue of fact and to adjudicate a legal right or privilege.

(5) "Presiding officer" means a division employee with authority to conduct non-alcohol/drug adjudicative proceedings.

(6) "Recording" means documenting, by electronic or other means, the testimony or information presented at a non-alcohol/drug adjudicative proceeding.

(7) "Serious violation" means a single violation determined by the division to require immediate remedial action.

R708-35-4. Designations.

(1) In compliance with Section 63G-4-202, all division non-alcohol/drug adjudicative proceedings are designated as informal proceedings, unless converted to formal proceedings by a presiding officer or division supervisor.

(2) An informal proceeding may be converted to a formal proceeding only if approved by a division supervisor and only if the conversion will promote efficiency, public safety, and not unreasonably increase cost.

R708-35-5. Authority for Conducting Adjudicative Proceedings.

Non-alcohol/drug adjudicative proceedings will be conducted in accordance with Sections 53-3-221, 63G-4-203, and this rule.

R708-35-6. Commencement of Adjudicative Proceedings.

(1) In accordance with Subsection 63G-4-201(1), non-alcohol/drug adjudicative proceedings may be commenced by:

(a) a notice of division action, if the proceedings are commenced by the division; or

(b) a request for division action, if the proceedings are commenced by a person other than the division.

(2) A notice of division action and request for division action shall include the information set forth in Subsections 63G-4-201(2)(a) and (3)(a) respectively.

R708-35-7. Non-Alcohol/Drug Adjudicative Proceedings.

The non-alcohol/drug adjudicative proceedings deal with the following types of hearings:

(a) point system, Sections 53-3-209 and 53-3-221;

(b) financial responsibility, Sections 41-12a-303.2, 41-12a-503, 41-12a-511, and 53-3-221;

(c) contributing to a fatality, Section 53-3-221;

(d) serious violation, Section 53-3-221;

(e) unlawful use of a license, Section 53-3-229;

(f) fraudulent application, Section 53-3-229;

(g) failure to appear or comply, Section 53-3-221;

(h) review examination request, Subsection 53-3-221(11);

(i) driving during denial, suspension, revocation, or disqualification, Subsection 53-3-220(2);

(j) leaving the scene of an accident, Section 53-3-221 (serious violation); and

(k) limited license, Subsection 53-3-220 (4)(a).

R708-35-8. Hearing Procedures.

(1) Time and place. Non-alcohol/drug adjudicative proceedings will be held at a time and place agreed upon by the parties.

(2) Notice. Notice shall be given as provided in Subsection 53-3-216(3) unless otherwise agreed upon by the parties. Notice shall be given on a form approved by the division and is deemed to be signed by the presiding officer. The parties are deemed to have knowledge of the law.

(3) Default. If the driver fails to respond timely to a division request or notice, a default may be entered in accordance with Section 63G-4-209.

(4) Evidence. The parties and witnesses may testify under oath, present evidence, and comment on pertinent issues. The presiding officer may exclude irrelevant, repetitious, immaterial, or privileged information or evidence. The presiding officer may consider hearsay evidence and receive documentary evidence, including copies or excerpts.

(5) Information. The driver shall have access to information in the division file to the extent permitted by law.

(6) Subpoenas. Discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence. Subpoenas may be issued by the division at the request of the driver if the costs of the subpoenas are paid by the driver and will not delay the proceeding.

(7) Administrative notice. The presiding officer has discretion to take administrative notice of records, procedures, rules, policies, technical scientific facts within the presiding officer's specialized knowledge or experience, or of any other facts that could be judicially noticed.

(8) Presiding officer. The presiding officer may:

(a) administer oaths;

(b) issue subpoenas;

(c) conduct prehearing conferences by telephone or in person to clarify issues, dispose of procedural questions, and expedite the hearing;

(d) tape record or take notes of the hearing at his/her discretion; and

(e) take appropriate measures to preserve the integrity of the hearing.

R708-35-9. Findings, Conclusions, Recommendations and Orders.

(1) Within a reasonable period of time after the close of the hearing, the presiding officer will issue a written decision that may include findings of fact, conclusions of law, and a recommendation.

(2) Statements reflecting findings of fact, conclusions of law, and recommendation may be written on a form that is approved by the division. The completed form will be transmitted to the central office of the division as soon as possible for the preparation of an order that complies with Subsection 63G-4-203(1).

(3) As provided in Subsection 53-3-216(3), the order will be mailed to the last known address of the driver.

(4) The order shall advise the driver of his/her right to seek a copy of written findings, conclusions, and recommendation of

the presiding officer, and these will be made available to the driver only upon written request.

R708-35-10. Reconsideration.

In accordance with Section 63G-4-302 a driver may file a request for reconsideration of the order within 20 days after receiving it. If the division does not issue an amended order within 20 days after receiving the request for reconsideration, the request for reconsideration shall be considered denied, and the driver may seek judicial review in accordance with Section 63G-4-402.

KEY: adjudicative proceedings
October 6, 1997 53-3-104
Notice of Continuation January 8, 2017 63G-4-203(1)

R708. Public Safety, Driver License.
R708-39. Physical and Mental Fitness Testing.
R708-39-1. Purpose.

Section 53-3-206 provides that the Driver License Division shall conduct testing of an applicant's physical and mental fitness to drive a motor vehicle. The purpose of this rule is to address how the division will carry out that testing.

R708-39-2. Authority.

This rule is authorized by Section 53-3-206.

R708-39-3. Physical and Mental Fitness Testing.

The division will examine an applicant's physical and mental fitness by testing for the following things: eyesight; ability to read and understand simple English used for highway signs; knowledge of the state traffic laws; other physical and mental abilities the division finds necessary to determine the applicant's fitness to drive a motor vehicle safely on the highways; and ability to exercise ordinary and responsible control driving a motor vehicle as determined by actual demonstration or other indicator. A doctor's statement may be required when deemed necessary by the division.

R708-39-4. Knowledge Testing.

(1) In addition to other tests, the division may test an applicant's knowledge of the state's traffic laws and rules before issuing a driver license. The applicant must complete 80% of the questions correctly to pass the knowledge test.

(2) The division may waive the knowledge test for a renewal if the applicant meets the requirements stated in Section 53-3-214.

(3) The division may administer the knowledge test in the following ways: a written test; an oral test for those who have difficulty understanding and/or reading the English language; a group test; and an open book test so applicant's can learn how to use the Driver License Handbook.

KEY: physical and mental fitness testing
April 21, 2010 53-3-206
Notice of Continuation January 20, 2017

R746. Public Service Commission, Administration.
R746-349. Competitive Entry and Reporting Requirements.
R746-349-1. Applicability.

These rules shall be applicable to each telecommunications corporation applying to be a provider of local exchange services or other public telecommunications services in all or part of the service territory of an incumbent telephone corporation.

R746-349-2. Definitions.

As used in this rule:

A. "CLEC" means a public telecommunications service provider that did not hold a certificate to provide public telecommunications service as of May 1, 1995.

B. "Division" means the Division of Public Utilities.

C. "GAAP" means generally accepted accounting principles.

D. "ILEC" means a telephone corporation which held a certificate to provide public teleocmmunications service as of May 1, 1995.

R746-349-3. Filing Requirements.

A. In addition to any other requirements of the Commission or of Title 63G, Chapter 4 and pursuant to 54-8b-2.1, each applicant for a certificate shall file, in addition to its application:

1. testimony and exhibits in support of the company's technical, financial, and managerial abilities to provide the telecommunications services applied for and a showing that the granting of a certificate is in the public interest. Informational requirements made elsewhere in these rules can be included in testimony and exhibits;

2. proof of a bond in the amount of $100,000. This bond is to provide security for customer deposits or other liabilities to telecommunications customers of the telecommunications corporation or liabilities to the Utah Public Telecommunications Service Support Fund, 54-8b-15, or the Hearing and Speech Impaired Fund, 54-8b-10. An applicant may request a waiver of this requirement from the Commission if it can show that adequate provisions exist to protect customer deposits or other customer and state fund liabilities;

3. a statement as to whether the telecommunications corporation intends to construct its own facilities or acquire use of facilities from other than the incumbent local exchange carrier, or whether it intends to resell an incumbent local exchange carrier's and other telecommunications corporation's services;

4. a statement regarding the services to be offered including:

a. which classes of customer the applicant intends to serve,

b. the locations where the applicant intends to provide service,

c. the types of services to be offered;

5. a statement explaining how the applicant will provide access to ordinary intralata and interlata message toll calling, operator services, directory assistance, directory listings and emergency services such as 911 and E911;

6. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

7. summaries of the professional experience and education of all managerial personnel who will have responsibilities for the applicant's proposed Utah operations;

8. an organization chart listing all the applicant's employees currently working or that plan to be working in or for Utah operations and their job titles;

9. a chart of accounts that includes account numbers, names and brief descriptions;

10. financial statements that at a minimum include:

a. the most recent balance sheet, income statement and cash flow statement and any accompanying notes, prepared according to GAAP,

b. a letter from management attesting to their accuracy, integrity and objectivity, and that the statements were prepared in accordance with GAAP,

c. if the applicant is a start-up company, a balance sheet following the above principles must be filed,

d. if the applicant is a subsidiary of another corporation, financial statements following the above principles must also be filed for the parent corporation;

11. financial statements to demonstrate sufficient financial ability on the part of the applicant. At a minimum, the applicant's statements must show:

a. positive net worth for the applicant CLEC,

b. sufficient projected and verifiable cash flow to meet cash needs as shown in a five-year projection of expected operations,

c. proof of bond as specified in R746-349-3(A)(2);

12. a five-year projection of expected operations including the following:

a. proforma income statements and proforma cash flow statements,

b. when applicable, a technical description of the types of technology to be deployed in Utah including types of switches and transmission facilities,

c. when applicable, detailed maps of proposed locations of facilities including a description of the specific facilities and services to be deployed at each location;

13. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

14. evidence of sufficient managerial and technical ability to provide the public telecommunications services contemplated by the application must be demonstrated by a showing of at least the following:

a. proof of certification in other jurisdictions; and that service is currently being offered in other jurisdictions by the applicant,

b. or the corporation has had at least two years of recent experience in providing telecommunications services related to the type of services the CLEC intends to provide;

15. a statement as to why entry by the applicant is in the public interest;

16. proof of authority to conduct business in Utah;

17. a statement regarding complaints or investigations of unauthorized switching, otherwise known as slamming, or other illegal activities of the applicant or any of its affiliates in any jurisdiction. This statement should include the following:

a. sanctions imposed against the applicant for any of these activities,

b. copies of any written documents related to these complaints, investigations, or sanctions, including: orders or other materials from the FCC or state commissions, any courts, or other government bodies, and any complaint letters or other documents from any non-government entities or persons,

c. the applicant's responses to any of these issues;

18. statement about the applicant's written policies regarding the solicitation of new customers and a description of efforts made by the applicant's to prevent unauthorized switching of Utah local service by the applicant, its employees or its agents.

B. Additional questions relating to the technical, financial, and managerial capabilities of the applicant and public interest issues may be submitted by the Division or other parties in accordance with R746-100-8, Discovery.

R746-349-4. Reporting Requirements.

A. When a telecommunications corporation files a request for negotiation with another telecommunications corporation for interconnection, unbundling or resale, the requesting telecommunications corporation shall file a copy of the request with the Commission.

B. Each certificated telecommunications corporation shall file an updated chart of accounts by March 31, of each year.

C. Each certificated telecommunications corporation with facilities located in Utah shall maintain network route maps that include all areas where the corporation is providing or offering to provide service in Utah. These maps will, at a minimum, include central office locations, types of switches, hub locations, ring configurations, and facility routes, accompanied by detailed written explanations. These route maps will be provided to the Division or the Commission upon request.

D. Each certificated telecommunications corporation shall file a map with the Division that identifies the areas within the state where the corporation is offering service. The map should separately identify areas being served primarily through resale and by facilities owned by the carrier. This map shall be updated within 10 days after changes to the service territory occur. The map shall be made available for public inspection.

E. At least five days before offering any telecommunications service through pricing flexibility, a telecommunications corporation shall file with the Commission its proposed price list or if ordered by the Commission, the prices, terms, and conditions of a competitive contract. Each filing may be made electronically and shall:

1. describe the public telecommunications services being offered;

2. set forth the terms and conditions upon which the public telecommunications service is being offered;

3. list the prices to be charged for the telecommunications service or the basis on which the service will be priced; and

4. be made available to the public through the Division.

F. The certificated CLEC shall file an annual report with the Division on or before March 31 for the preceding year, unless the CLEC requests and obtains an extension from the Commission. The annual report shall contain the following information, unless specific forms are provided by the Division:

1. annual revenues from operations attributable to Utah by major service categories. That information would be provided on a "Total Utah" and "Utah Intrastate" basis. "Total Utah" will consist of the total of interstate and intrastate revenues. "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Utah Intrastate revenues shall be reported according to at least the following classes of service:

a. private line and special access,

b. business local exchange,

c. residential local exchange,

d. measured interexchange,

e. vertical services,

f. business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible;

2. annual expenses and estimated taxes attributed to operations in Utah;

3. year-end balances by account for property, plant, equipment, annual depreciation, and accumulated depreciation for telecommunications investment in Utah. The actual depreciation rates which were applied in developing the annual and accumulated depreciation figures shall also be shown;

4. financial statements prepared in accordance with GAAP. These financial statements shall, at a minimum, include an income statement, balance sheet and statement of cash flows and include a letter from management attesting to their accuracy, integrity and objectivity and that the statements follow GAAP;

5. list of services offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served;

6. number of access lines in service by geographic area, segregated between business and residential customers;

7. number of messages and minutes of services for measured services billed to end users;

8. list of officers and responsible contact personnel updated annually;

9. a report of gross revenue on a form supplied by the Division. This report shall be used in calculating the Public Utility Regulation Fee owed by the CLEC.

G. The annual report and the report of gross revenue filed by a CLEC may be considered protected documents under the Government Records Access Management Act, if the CLEC complies with the requirements of that act.

R746-349-5. Change of Service Provider.

A. All requests for termination of local exchange or intrastate toll service from an existing telecommunications corporation and subsequent transfer to a new carrier must be in compliance with 47 CFR 64.1100 and 1150, 1996, incorporated by this reference.

B. A telecommunications provider will be held liable for both the unauthorized termination of a customer's service with an existing carrier and the subsequent unauthorized transfer to the providers's own service. Telecommunications providers are responsible for unauthorized service terminations and transfers resulting from the actions of their agents. A carrier that engages in the unauthorized activity shall restore the customer's service to the original carrier without charge to the customer. Customer charges during the unauthorized period shall be the lesser of the charges charged by the original provider or the unauthorized provider. Violators may be punished pursuant to 54-7-25 through 54-7-28. The telecommunications provider responsible for the unauthorized transfer shall reimburse the customer or the original carrier for reestablishing service to the customer at the applicable tariff, price list or contract rate of the original carrier.

R746-349-6. CLEC and ILEC Subject to Pricing Flexibility Exemptions.

A. Unless otherwise ordered by the Commission either in the CLEC's certificate proceeding or in a proceeding instituted by an ILEC, the Commission or other party, a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3 is exempt from the following statues and rules. All other rules of the Commission and all other duties of public utilities not specifically exempted by these rules or by a Commission order apply to a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3. All powers of the Commission not specifically altered by these rules apply to a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3.

1. Exemptions from Title 54:

54-3-8, 54-3-19 -- Prohibitions of discrimination

54-7-12 -- Rate increases or decreases

54-4-21 -- Establishment of property values

54-4-24 -- Depreciation rates

54-4-26 -- Approval of expenditures

2. Exemptions from Commission rules:

R746-340-2 (D) -- Uniform System of Accounts (47 CFR 32)

R746-340-2 (E) (1) -- Tariff filings required

R746-340-2 (E) (2) -- Exchange Maps

R746-34l -- Lifeline (CLEC with ETC status)

R746-344 -- Rate case filing requirements

R746-401 -- Reporting of construction, acquisition and disposition of assets

R746-405 -- Tariff formats

R746-600 -- Accounting for post-retirement benefits

3. The CLEC will be exempted from the Lifeline rule, R746-341, only until the Commission establishes Lifeline rules that may include the CLEC or until the CLEC begins to provide residential local exchange service. The ILEC will not be exempted from the R746-341. Lifeline Rule.

R746-349-7. Informal Adjudication of Certain CLEC Merger and Acquisition Transactions.

A. A CLEC may obtain approval of a transaction subject to 54-4-28 (merger, consolidation or combination), 54-4-29 (acquiring voting stock or securities), and 54-4-30 (acquiring properties) in the following manner. Such adjudicative proceedings are designated as informal adjudicative proceedings pursuant to 63G-4-203 unless converted to formal adjudicative proceedings.

1. The CLEC shall submit an application which includes, but is not limited to:

a. identification that it is not an ILEC,

b. identification that it seeks approval of the application pursuant to this rule,

c. a reasonably detailed description of the transaction for which approval is sought,

d. a copy of any filings required by the Federal Communications Commission or any other state utility regulatory agency in connection with the transaction, and

e. copies of any notices, correspondence or orders from any federal agency or any other state utility regulatory agency reviewing the transaction which is the subject of the application.

2. Upon receipt of the CLEC's application, the Commission will issue a public notice stating that the application has been filed, that any interested party may submit comments on the application within 14 days following public notice and may submit reply comments within 21 days following public notice, and provide notice of the date and time for a hearing on the application, which shall be scheduled to occur within 30 days following the issuance of the public notice.

3. If no objection to the proposed transaction is submitted in any filed comments or reply comments, the Commission will presume that approval of the transaction is in the public interest and use the information contained in the application and accompanying documents as evidence to support a Commission order.

4. The Commission may convert the proceeding on an application into a formal adjudicative proceeding based upon an objection made in comments or reply comments, evidence submitted, other reasonable basis, which may include failure of the transaction to qualify for streamlined treatment from a federal agency, or its own motion and may continue the hearing on the application as needed.

R746-349-8. CLEC's Obligations with Respect to Provision of Services.

A. The CLEC agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

1. the CLEC's obligation to furnish service to customers is dependent on the availability of suitable facilities on its network at company-designated locations as identified in its annual network route map filing;

2. the CLEC will only be responsible for the installation, operation, and maintenance of services that it provides;

3. the CLEC will furnish service if it is able to obtain, retain and maintain suitable access rights and facilities, without unreasonable expense, and to provide for the installation of those facilities required incident to the furnishing and maintenance of that service;

4. at its option, the CLEC may require payment of construction or line-extension charges by the customer ordering telephone service. Those charges will be in addition to the normal rates and charges applicable to the service being provided;

5. when potential customers are so located that it is necessary or desirable to use private or government right-of-way to furnish service, those potential customers may be required, at the CLEC's option, to provide or pay the cost of providing the right-of-way in addition to any other charges;

6. all construction of facilities will be undertaken at the discretion of the CLEC, consistent with budgetary responsibilities and consideration for the impact on the CLEC's other customers and contractual responsibilities.

R746-349-9. Pricing Flexibility Revocation, Conditions, or Restrictions.

A. The Commission may initiate or any interested person may request agency action for the Commission to initiate, a proceeding to revoke or impose conditions or restrictions on a telecommunications corporation's pricing flexibility as authorized by 54-8b-2.3(8).

1. A request to initiate any proceeding pursuant to this rule shall:

a. Identify the telecommunications corporation or corporations and the public telecommunications service or services whose pricing flexibility the requesting party believes may be subject to revocation or imposition of conditions or restrictions;

b. The basis for the belief; and

c. The relief sought.

2. A request to initiate a proceeding shall be served upon the telecommunications corporation or corporations the requesting party has identified in the request, the Division and the Committee.

3. The telecommunications corporation or corporations against whom the request is directed and any other interested party may respond to the request in accordance with the Commission's procedural rules and standard practices.

4. If a proceeding is initiated, an interested party may request to review confidential information retained by the Commission or the Division that is reasonably related to any potential grounds for revocation, conditioning or restriction under section 54-8b-2.3(8). The party shall certify that it seeks to review that confidential information solely for purposes of determining whether a sufficient factual basis exists to and that the confidential information will not be used for any other purpose or disclosed to any persons who may be able to use the confidential information in business decisions to any party's competitive advantage. Prior to disclosing any confidential information, the Commission or the Division:

a. Shall require the requesting party to execute an appropriate nondisclosure agreement;

b. Shall notify any telecommunications corporation whose company-specific information would be disclosed of the request at least 14 calendar days before the planned date for disclosing such information; and

c. Shall not disclose the company-specific information of any telecommunications corporation that objects to disclosure of its confidential information, if such telecommunications corporation files with the Commission or Division and serves upon other parties an objection to the disclosure of such confidential information within 10 calendar days after receiving the notice required by 349-9.4.b. The Commission shall conduct a hearing at which the telecommunications corporation whose confidential information may be disclosed is given the opportunity to present its objections or request terms and conditions for disclosure and during which other parties may respond to the telecommunications corporation whose confidential information is sought to be disclosed.

5. In any proceeding conducted, the Commission will enter an appropriate protective order to ensure protection for

confidential, proprietary, and competitively sensitive information that has been or is provided to the Commission, the Division, the Committee, or another party to the proceeding.

6. Nothing in this rule limits the ability of any party or the Commission to raise or address any issue in any other proceeding or as permitted by law.

KEY: essential facilities, imputation, public utilities, telecommunications
August 25, 2008 54-7-25 through 28
Notice of Continuation January 31, 2017 54-8b-2
54-8b-3.3
63G-4

R746. Public Service Commission, Administration.
R746-351. Pricing Flexibility.
R746-351-1. Purpose and Authority.

This rule establishes a procedure by which the pricing flexibility granted to an incumbent telephone corporation under Section 54-8b-2.3(2)(b) becomes effective.

R746-351-2. Definitions.

A. "Competitive Local Exchange Carrier" (CLEC) means a provider of public telecommunications services certificated by the Commission pursuant to 54-8b-2.1, other than an ILEC.

B. "Incumbent Local Exchange Carrier" (ILEC) means an incumbent telephone corporation as defined under Section 54-8b-2(4).

C. "Substitute or Substitutable Service" means a service offered by a CLEC that is an economic alternative in terms of quality, quantity, and price to that provided by the ILEC.

R746-351-3. Grant of Pricing Flexibility.

A. Procedure -- The Commission shall grant pricing flexibility to an ILEC in an independent proceeding brought by the ILEC, or in the certification proceeding for a CLEC for the same or substitutable services offered by the ILEC in the same geographic area served by both the CLEC and the ILEC. In granting pricing flexibility to an ILEC, the Commission shall:

1. define the geographic area in which pricing flexibility can become available to the ILEC; and

2. list the public telecommunications services the ILEC is authorized to price flexibly.

B. Grant Effectiveness -- A grant of pricing flexibility by the Commission to an ILEC does not become effective except as provided in Section R746-351-4.

R746-351-4. Effectiveness of Pricing Flexibility.

A. ILEC Petition -- Pricing flexibility granted to an ILEC does not become effective until all of the conditions specified in Section 54-8b-2.3(2)(b)(iii) have been satisfied. The ILEC shall:

1. Identify:

a. the CLEC and the docket in which pricing flexibility was granted to the ILEC;

b. the defined geographic area identified by the Commission, pursuant to R746-351-3(A)(1), in which pricing flexibility is to become effective for the ILEC;

c. the public telecommunications services being provided by the CLEC in the defined geographic area; and

d. The specific ILEC services, from the list of the public telecommunications services identified by the Commission pursuant to R746-351-3(A)(2), to be priced flexibly by the ILEC in the defined geographic area that are the same or substitutable for the public telecommunications services provided by the CLEC in the defined geographic area; and

2. Certify that:

a. the CLEC has begun providing the identified public telecommunications services in the defined geographic area;

b. the ILEC has allowed the CLEC to interconnect with the essential facilities and to purchase the essential services of the ILEC in accordance with the terms of an agreement approved by the Commission; and

c. the ILEC is in compliance with the applicable rules and orders of the Commission adopted or issued under Section 54-8b-2.2; and

3. Include:

a. a proposed price list or competitive contract for the service or group of services to be pricing flexibility; and

b. evidence which demonstrates that the prices to be offered by the ILEC under the proposed price list or competitive contract are in compliance with Section 54-8b-3.3.

B. Notice -- The ILEC shall serve notice of the request on:

1. all parties in the original proceeding in which the ILEC was granted pricing flexibility; and

2. all other certificated providers of public telecommunications services in the defined geographic area.

3. The notice shall include information on the time periods for responses and Commission action as provided in R746-351-4(C).

C. Time Frame -- Within 15 days after service of the notice of the request under this rule, the Commission shall grant, deny or determine whether a hearing is necessary to consider the request. Interested persons shall file responses to the request within 10 days after service of the notice of request.

D. Ruling -- The Commission shall issue a ruling determining the ILEC's compliance with Section 54-8b-2.3(2) and whether ILEC pricing flexibility is effective:

1. within 14 days after the Commission grants or denies a request, if there is no hearing on the request; or

2. if the Commission holds a hearing on the request, within 14 days after the conclusion of the hearing.

KEY: pricing flexibility, public utilities, telecommunications
September 2, 1997 **54-8b-2**
Notice of Continuation January 31, 2017 **54-8b-2.2**
54-8b-2.3
63G-4-207
63G-4-503

R746. Public Service Commission, Administration.
R746-440. Voluntary Resource Decision.
R746-440-1. Filing Requirements for a Request for Approval of a Resource Decision.

(1) A request for approval of a Resource decision shall include testimony and exhibits which provide:

(a) A description of the Resource decision,

(b) Information to demonstrate that the Energy utility has complied with the applicable requirements of the Act and Commission rules,

(c) The purposes and reasons for the Resource decision,

(d) An analysis of the estimated or projected costs of the Resource decision, including the engineering studies, data, information and models used in the Energy utility's analysis,

(e) Descriptions and comparisons of other resources or alternatives evaluated or considered by the Energy utility, in lieu of the proposed Resource decision,

(f) Sufficient data, information, spreadsheets, and models to permit an analysis and verification of the conclusions reached and models used by the Energy utility,

(g) An analysis of the estimated effect of the Resource decision on the Energy utility's revenue requirement,

(h) Financial information demonstrating adequate financial capability to implement the Resource decision,

(i) Major contracts, if any, proposed for execution or use in connection with the Resource decision,

(j) Information to show that the Energy utility has or will obtain any required authorizations from the appropriate governmental bodies for the Resource decision, and

(k) Other information as the Commission may require.

(2) Notice of a request for approval of a Resource decision.

(a) At least five calendar days prior to filing a request for approval of a Resource decision, the Energy utility shall provide public notice of its request for approval of a Resource decision. The public notice shall provide a description of the request and information on how interested persons my obtain, from the Energy utility, further information about the request or a copy of the request.

(b) At least five calendar days prior to filing a request for approval of a Resource decision, the Energy Utility shall inform the Commission of the anticipated filing and the means by which the Energy Utility has made, or will make, the public notice.

(3) Issues regarding the production, treatment and use of materials of a confidential or proprietary nature, including issues regarding who is entitled to review the materials, will be determined by the Commission.

R746-440-2. Process for Approval of a Resource Decision.

(1) Following a filing of a request for approval of a Resource decision:

(a) At a scheduling conference, the Commission will set an intervention deadline and schedule the time for conducting a public hearing on the request. The Commission will issue a Scheduling Order subsequent to the scheduling conference.

(b) The Commission will issue a protective order, to facilitate access to and exchange of information which is claimed to be confidential or of a proprietary nature.

(c) Discovery may commence. Responses to discovery requests shall be made within 21 calendar days after receipt, or as otherwise agreed between the parties or ordered by the Commission.

(d) Delivery of documents may be made by electronic means (e.g., email, disk, facsimile), instead of paper versions, as agreed by the parties or as ordered by the Commission.

(2) The Energy utility shall maintain a complete record of all materials submitted to the Commission and all materials submitted in response to discovery requests during a Resource decision process for 10 years from the date of the Commission's final order in a Resource decision proceeding. A party to a proceeding may petition the Commission to require specified additional materials to be maintained for a specified period.

R746-440-3. Process for Review and Determination of a Request for an Order to Proceed with Implementation of an Approved Resource Decision.

(1) A request for such Commission review and determination shall include testimony and exhibits which provide:

(a) An explanation of the nature and cause of the change in circumstances or projected costs, including how the Energy utility became aware of the change in circumstances or projected cost and any action it has taken,

(b) An explanation of why an Order to Proceed is or is not, in the Energy utility's view, the proper response to the changed circumstances,

(c) The Energy utility's updated projections regarding the impact of the changed circumstances or projected costs on the timing, cost and other aspects of the approved Resource decision,

(d) The costs incurred to date in connection with the Resource decision,

(e) The Energy utility's updated projections of any unavoidable costs if the approved Resource decision is not pursued to completion, and

(f) Major proposed contracts or contract amendments, if any, to be used in the event of an Order to Proceed.

(2) Notice of a request for review and determination of an Order to Proceed shall be provided, by the Energy utility, to all parties in the docket in which the Resource decision was approved and otherwise as determined by the Commission.

(3) The Energy utility shall maintain a complete record of its analyses and evaluations relating to the Order to Proceed, including spreadsheets and models materially relied upon by the utility, all materials submitted to the Commission and all materials submitted in response to discovery requests during a proceeding involving a review and determination for at least 10 years from the date of the Commission's final order in a Commission proceeding for review and determination of an Order to Proceed with Implementation of an approved Resource decision. A party to a proceeding may petition the Commission to require specified additional materials to be maintained for a specified period.

(4) Issues regarding the production, treatment and use of materials of a confidential or proprietary nature, including issues regarding who is entitled to review those materials will be determined by the Commission.

KEY: resource decision, energy utility, filing requirements
March 19, 2007 54-17-100 et seq.
Notice of Continuation January 31, 2017

R850. School and Institutional Trust Lands, Administration.
R850-90. Land Exchanges.
R850-90-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to specify application procedures and review criteria for the exchange of trust lands.

R850-90-150. Planning.

Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC);

2. Evaluation of and response to comments received through the RDCC process; and

3. Evaluation of and response to any comments received through the solicitation process conducted pursuant to R850-90-400(1).

R850-90-200. Exchange Criteria.

The agency may exchange trust land for land and other assets which the director finds suitable and of equal or greater value and utility.

1. Exchanges must clearly be in the best interest of the appropriate trust as documented in a director's finding. The finding shall address:

(a) the appraised value of affected lands and other assets and the amount of cash involved;

(b) the likelihood that the acquired land and other assets will provide income in excess of that being generated from existing trust land;

(c) an analysis of the revenue potential of the existing trust land; and

(d) potential management and administrative costs and opportunities.

2. The finding shall verify that the exchange will not result in an unmanageable and/or uneconomical parcel of trust land, nor eliminate access to a remnant holding, without appropriate remuneration or compensation.

3. The percentage of cash which may be included in an exchange shall not exceed 25% of the value of the trust land involved unless the director has determined that a higher percentage is in the best interests of the trust beneficiary.

R850-90-300. Application Requirements.

This section does not apply to exchange proposals initiated by the agency.

1. Preapplication review: In order to avoid unnecessary expenses, persons requesting an exchange shall be afforded the opportunity to discuss the concept of the exchange with the agency prior to submitting a formal application.

2. A completed application form must be received pursuant to R850-3.

R850-90-400. Competitive Offering.

1. Upon receipt of an exchange application, the agency shall solicit competing exchange proposals, lease applications and sale applications. Competing applications will be solicited through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the trust land is located. At least 30 days prior to consummation of an exchange, sale or lease, certified notification will be sent to permittees of record, adjoining permittees/lessees and adjoining landowners. Notices will also be posted in the local governmental administrative building or courthouse. Lease applications shall be processed in accordance with R850-30-500(2). Sale applications shall be reviewed pursuant to R850-80-500.

2. In addition to the advertising requirements of R850-90-400(1), the agency may advertise for competing applications for exchange, lease, or sale to the extent which the director has determined may reasonably increase the potential for additional competing applications.

3. The agency shall allow all applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt (Postal Service form 3800), within which to submit a sealed bid containing their proposal for the subject parcel. Competing bids will be evaluated using the criteria found in R850-30-500(2)(g), R850-80-500, and R850-90-200.

R850-90-500. Determination for the Exchange of Trust Lands.

1. The agency shall choose the successful applicant by conducting a market analysis pursuant to R850-80-500(2) on each option for which an application has been received. The determination as to which application will be approved shall be based on R850-80-500(3) and R850-90-200(2).

2. The successful applicant shall be charged an amount equal to all appraisal and advertisement costs. All monies, except application fees, tendered by unsuccessful applicants will be refunded.

3. The director may approve the exchange when the criteria specified in R850-90-200 have been satisfied.

4. Applicants desiring reconsideration of agency action relative to exchange determinations may petition for review pursuant to agency rule.

R850-90-600. Land Exchange Appraisals.

1. The agency shall contract for appraisals of properties proposed for exchange utilizing the deposit paid by the applicant. Appraisals to determine values of trust land shall be provided protected records status pursuant to Subsection 63G-2-305(7).

2. Appraisals for land exchanges with the federal government shall be, whenever possible, completed jointly and be subject to review and approval of both parties and to agreements undertaken pursuant to the Federal Land Exchange Facilitation Act, 43 U.S.C. 1716.

R850-90-700. Private Exchange Procedures.

1. Political subdivisions of the state and agencies of the federal government shall be eligible for private exchange.

2. In order to determine that a private exchange is in the best interests of the trust beneficiaries, advertising to provide notice of this action shall be required pursuant to Section 53C-4-102(3). The cost of this advertising shall be negotiated.

3. All agency rules governing land exchanges shall apply to private exchanges except R850-90-400 and R850-90-500. R850-90-300(2), R850-90-500(2), and R850-90-900(4) may be waived when the agency is a co-applicant.

R850-90-800. Existing Improvements.

Any exchange of trust land upon which authorized improvements have been made shall be subject to the reimbursement of the depreciated value of the improvements to the owner of the improvements by the person receiving the land in the exchange.

R850-90-900. Mineral Estates and Leases.

1. Trust Lands Administration mineral interests may be exchanged in accordance with Section 53C-2-401(2).

2. Mineral estate exchanges must clearly be in the best interest of the applicable trust as documented by the agency's record. The record shall address those criteria listed in R850-90-200.

3. In exchanges with persons other than the federal government, all mineral estates are reserved to the Trust Lands Administration unless exceptional circumstances justify the exchange of the mineral estate.

4. Upon the exchange of Trust Lands Administration mineral estate, Trust Lands Administration mineral leases shall continue to be administered by the agency until the termination, relinquishment or expiration of the lease. Upon termination of the mineral lease the administration of the mineral estate transfers to the acquiring party.

5. Acquired mineral estates shall be managed in accordance with Sections 53C-2-407(3), 53C-2-412 and 53C-2-413.

R850-90-1000. Existing Rights on Acquired Lands.

Valid existing rights on lands acquired from the federal government will be managed in accordance with Sections 53C-5-102(2) and 53C-4-301(2).

R850-90-1100. Existing Leases and Permits.

Prior to completion of exchanges, Trust Lands Administration lessees and permittees shall be notified and leases and permits cancelled or amended in accordance with the terms of the lease or permit.

KEY: land exchange, administrative procedures
May 24, 2016 53C-1-302(1)(a)(ii)
Notice of Continuation January 12, 2017 53C-2-201(1)(a)
53C-4-101(1)
53C-4-102

R850. School and Institutional Trust Lands, Administration.
R850-120. Beneficiary Use of Institutional Trust Land.
R850-120-100. Authorities.

This rule implements the Utah Enabling Act to allow use of land granted under Sections 7, 8 and 12 of that Act by its beneficiary institution as a direct economic benefit to the institution and specifies application procedures and review criteria under authority of Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1).

R850-120-150. Planning.

Pursuant to Section 53C-2-201(1)(a),the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC); and

2. Evaluation of and response to comments received through the RDCC process.

R850-120-200. Scope.

This rule applies to applications by those institutions named in Sections 7, 8 and 12 of the Utah Enabling Act for in-kind use of their respective institutional trust lands administered by the agency.

R850-120-300. Application Requirements.

1. A letter of application must be received with a non-refundable application fee. The application fee will be established separately for each application based upon the cost of processing the application. The letter of application must include:

(a) the name and address of contact authority;

(b) a legal description of the land involved;

(c) a statement of the intended in-kind use;

(d) documentation that describes the manner in which the intended in-kind use is consistent with plans and programs approved or under development by the institution, and the institution's statutory mandates.

2. Upon receipt of a letter of application, the agency shall review it for completeness. Institutions submitting deficient letters of application shall be allowed 120 days to provide the required information.

R850-120-400. Review Criteria.

The agency may enter into agreements for in-kind use of institutional trust land by its beneficiary. The criteria by which an application will be considered are:

1. The applicant must be the beneficiary of the land under application.

2. The agreed use must be a prudent use of the property, taking into account related plans and programs approved by the institution, the opportunity cost of the in-kind use and the effect of that use on the management of other institutional trust lands.

3. The in-kind use must not result in net derogation of trust asset value.

4. The in-kind use must be consistent with the institution's constitutional and statutory mandate.

R850-120-500. Determination for Beneficiary Use.

1. The director may approve the in-kind use when the criteria specified in R850-120-400 are satisfied.

2. Applicants desiring reconsideration of agency action relative to in-kind use determinations may petition for review pursuant to R850-9.

3. An in-kind use agreement may, in the discretion of the agency, contain stipulations including, but not limited to, the following:

(a) Provisions for periodic monitoring of the in-kind use to assure compliance with the purposes of the use agreement;

(b) Provisions allowing for the collection of compensation to the agency for frequent or extensive monitoring; and

(c) Provisions which will allow for cancellation or amendment of leases in order to comply with statutory changes.

4. Beneficiary institutions shall, at early stages of in-kind use proposal development, contact the agency regarding the feasibility of in-kind use. Beneficiary institutions may not use or otherwise occupy the property until a formal in-kind use agreement has been fully executed.

KEY: beneficiaries, land use, administrative procedures
March 4, 2003 53C-1-302(1)(a)(ii)
Notice of Continuation January 12, 2017 53C-2-201(1)(a)
53C-4-101(1)

R914. Transportation, Operations, Aeronautics.
R914-3. Aircraft Registration Enforcement.
R914-3-1. Purpose and Authority.

The purpose of this rule is to provide procedures for the enforcement of state aircraft registration laws and the administration of penalties as required by Utah Code Section 72-10-112.

R914-3-2. Definitions.

(1) "Based" means aircraft that is hangared, tied down, or parked at an airport located in the state of Utah for a plurality of the year, which is a total of six months and a day, minimum.

(2) "Tax Commission" means the Utah State Tax Commission.

(3) "Department" means the Utah Department of Transportation, Division of Aeronautics.

R914-3-3. Procedure for Enforcement.

(1) Airport operators shall semi-annually, no later than March 1 and September 1, provide to the Department a report containing a list of aircraft Based at the airports they operate. The list shall contain:

(a) The Federal Aviation Administration tail number of each aircraft, and;

(b) The name and address of the owner or owners and the person responsible for payment of the Utah aircraft registration fee, if different.

(2) In addition to the semi-annual reports, airport operators shall coordinate with the Department, or its agent, and provide information as requested by the Department, or its agent, to determine and verify aircraft Based in the state.

(3) The Department, or its agent, shall conduct compliance audits and inspections as needed to enforce applicable state laws related to the registration of aircraft.

(4) In addition to annually submitting to the Tax Commission the statewide database of aircraft Based in the state as required under Section 72-10-110, the Department shall advise the Tax Commission of aircraft Based in the state that were not included in the annual submission.

(5) The Department shall send a Late Notice by certified mail to all aircraft owners who have failed to pay annual registration fees by January 31 each year.

(6) Aircraft owners who fail to pay annual registration fees within 30 days after receiving a Late Notice from the Department shall be penalized as provided by R914-3-4.

R914-3-4. Notice of Agency Action -- Penalties.

(1) The Department may commence an adjudicative proceeding pursuant to rule R907-2 to administer a penalty for failure of an owner or owners of an aircraft to register and pay required registration fees for an aircraft Based in the state by serving a Notice of Agency Action upon the owner or owners of the aircraft accused of the violation.

(2) The Department may impose a penalty of 10% of the registration fee for the first month and 5% of the registration fee for each subsequent month an aircraft is operated in violation of Section 72-10-109.

(3) In addition to other penalties and as authorized in 72-10-112, the owner or owners of the aircraft may also be subject to penalties levied by the Tax Commission authorized by Section 41-1a-1101, providing for seizure of the aircraft, and Section 41-1a-1301, placement of a lien, seizure and sale of the aircraft.

(4) Administrative Hearings initiated under this provision shall be designated as informal hearings under the Utah Administrative Procedures Act and conducted as set forth in Utah Code Section 63G-4-203.

R914-3-5. Appeals of Department Action.

(1) Penalized persons may appeal penalties imposed by the Department under this rule and pursuant to the Notice of Agency Action.

(2) Appeals shall be considered by a steering committee created by the Department. The steering committee shall have the powers granted to the Deputy Director, or the Deputy Director's designee, in R907-1-3 for appeals from failure to pay required aircraft registration fees for aircraft based in the state of Utah.

(3) The committee's decision shall be considered a final agency order pursuant the Administrative Procedures Act.

KEY: certificate of registration, Utah-based aircraft, aircraft, penalties
January 18, 2017 72-10-112(3)(b)